रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 06] नई दिल्ली, फरवरी 16—फरवरी 22, 2025, शनिवार/माघ 27—फाल्गुन 3, 1946
No. 06] NEW DELHI, FEBRUARY 16—FEBRUARY 22, 2025, SATURDAY/MAGHA 27–PHALGUNA 3, 1946

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मन्त्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 18 फरवरी, 2025

का.आ. 201.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, सरकार भारत का दूतावास, वागाडुगू, में श्री प्रवीन सुहाग, निजी सहायक, को फरवरी 18, 2025 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है

[फा. सं. टी. 4330/01/2025(06)]

एस.आर.एच. फहमी, निदेशक (सीपीवी)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 18th February, 2025

S.O. 201.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Parveen Suhag, Personal Assistant as Assistant Consular Officer in the Embassy of India, Ouagadougou, to perform the consular services as Assistant Consular Officer with effect from February 18, 2025.

[F. No. T. 4330/01/2025(06)]

S.R.H FAHMI, Director (CPV)

नई दिल्ली, 19 फरवरी, 2025

का.आ. 202.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, सरकार भारत का दूतावास, दुसांबे, में श्री मनीष कुमार और श्री दिलीप कुमार वर्मा, सहायक अनुभाग अधिकारियो, को फरवरी 19, 2025 से सहायक कांसुलर अधिकारियो के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/01/2025(07)]

एस.आर.एच. फहमी, निदेशक (सीपीवी)

New Delhi, the 19th February, 2025

S.O. 202.— Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Manish Kumar and Shri Dilip Kumar Verma, both Assistant Section Officers as Assistant Consular Officers in the Embassy of India, Dushanbe, to perform the consular services as Assistant Consular Officers with effect from February 19, 2025.

[F. No. T. 4330/01/2025(07)]

S.R.H FAHMI, Director (CPV)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 31 जनवरी, 2025

का.आ. 203.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रम के निम्नलिखित कार्यालय को, जिसके 80 या अधिक प्रतिशत कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:-

इण्डियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन्स प्रभाग),

पश्चिमी क्षेत्र पाइपलाइन्स, फेगमिल परिसर, जोधपुर

[फा. सं. 11012/3/2021-रा.भा.(2025)-23]

डॉ. ज्योति मिश्रा, उप निदेशक (राजभाषा)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 31st January, 2025

S.O. 203.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the central Government hereby notifies the following office of the Public Sector undertaking under the administrative control of the Ministry of Petroleum & Natural Gas, in which 80 or more percent of the staff have acquired working Knowledge of Hindi:-

Indian Oil Corporation Limited, (Pipelines Division)

Western Region Pipelines, Fegmil Complex, Jodhpur

[F. No. 11012/3/2021-OL(2025)-23]

Dr. JYOTI MISHRA, Dy. Director (OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 11 फरवरी, 2025

का.आ. 204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **एंड्रयू यूल एंड कंपनी लिमिटेड,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री मिहिर कोले, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय,कोलकाता, पंचाट (संदर्भ संख्या **REF. NO. 37 OF 2013**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.02.2025 को प्राप्त हुआ था।

[सं. एल - 42011/102/2013 -आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th February, 2025

S.O. 204.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. **NO. 37 OF 2013**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Andrew Yule & Company Limitted, and Shri Mihir Koley,Worker,** which was received along with soft copy of the award by the Central Government on 11.02.2025.

[No. L-42011/102/2013 -IR (DU]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 36 OF 2013

REF. NO. 37 OF 2013

REF. NO. 38 OF 2013

REF. NO. 39 OF 2013 AND

REF. NO. 43 OF 2013

Parties : Employers in relation to the management of

Andrew Yule & Company Limited

VS

1. **Sri Naresh Kumar Chakraborty,**
2. **Sri Mihir Koley,**
3. **Sri Joydeb Chatterjee,**
4. **Sri Samarendra Nath Mukherjee, and**
5. **Sri Subhas Chandra Naskar**

Appearance:

On behalf Andrew Yule & Company Limited: Mr. Sushil Kumar Karmakar, Ld. Advocate.

On behalf of Five workmen: Mr. Saibal Mukherjee, Ld. Advocate.

Dated: 21st January, 2025

AWARD

This common award disposes all the above mentioned five reference cases as issues involved in all those cases are exactly same and parties are five workmen who have alleged to have been illegally terminated from their permanent regular service by their employer Andrew Yule & Co. Ltd., on their attaining the age of 58 years.

The Central Government, Ministry of Labour vide Order Nos. L-42011/103/2013 –IR(DU) dated 25-07-2013: No.L-42011/102/2013-IR(DU) dt.25-07-2013; No. L-42011/101/2013-IR (DU) dt. 25-07-2013; No. L-42011/100/2013-IR (DU) dt.29-07-2013 and No L-42012/59/2013-IR (DU) dt. 12-09-201, in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

1. (Ref. 36/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Naresh Kumar Chakraborty** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no.10 (23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

2. (Ref. 37/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Mihir Koley** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

3. (Ref. 38/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Joydeb Chatterjee** w.e.f. 01-02-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

4. (Ref. 39/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Samarendra Nath Mukherjee** w.e.f. 01-07-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

5. (Ref. 43/2013)

"Whether the action of the management of Andrew Yule & Company Limited in terminating the service of Sri **Subhas Chandra Naskar** w.e.f. 01-01-2012 by way of premature retirement without extending the benefit of enhanced age of superannuation, from 58 to 60 years and implementing the orders of the Ministry of Heavy Industries & Public Enterprises, Dept. of Heavy Industries, Govt. of India vide memo no. 10(23)/2011-PEI dated 03-11-2011, with immediate effect is legal and justified? To what relief the workman is entitled to?"

That contents of their separate claim statements appear to be exactly same save and except their date of joining, category of service to which they joined the establishment of Andrew Yule & Co. Ltd., their date of birth and their date of superannuation.

Sri **Naresh Kumar Chakraborty,** in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a clerical staff (Typist) on 16-08-1979 on probation and later his service was confirmed on 16-02-1980 and all along he was posted at Head Office at Kolkata.

Sri **Mihir Koley,** in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Subordinate Staff (Driver) on 20-03-1980 on probation and later his service was confirmed on 20-09-1980 and all along he was posted at Head Office at Kolkata.

Sri **Joydeb Chatterjee,** in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Typist on 01-09-1987 and all along he was posted at Head Office at Kolkata.

Sri **Samarendra Nath Mukherjee,** in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Durwan on 05-07-1990 and all along he was posted at Head Office at Kolkata, and

Sri **Subhas Chandra Naskar,** in his written statement has alleged that he joined the establishment of Andrew Yule & Co. Ltd. as a Clerk on 01-10-1985 and all along he was posted at Head Office at Kolkata.

However, they all have alleged that when they joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was fixed at 60 years. That company was declared as a sick industry in the year 2001 and as such their age of superannuation was rolled to 58 years with the approval of the Cabinet.

But later, Central Govt. had taken a decision to increase the age of superannuation of Board Level and Below Board Level employees of Central Public Sector Enterprise from 58 years to 60 years vide D.P.E. O.M. No. 18 (6)/98 –GM-GL-002 dated 19-05-1998.

Further, when the sick CPSEs started making profit after 2004, then those CPSEs requested the concerned Ministry/Department to enhance the age of superannuation of its employees from 58 years to 60 years. That D.P.E. approved the proposal to enhance the age of superannuation from 58 to 60 years on fulfilment of certain conditions by issuing memorandum No. 18(1) / 2007- GM-GL-80 dated 20-04-2007.

On receiving such memorandum Board of Directors of Andrew Yule & Co. Ltd. called a meeting on 27-07-2011 and decided to enhance the age of superannuation of its all employees from 58 to 60 years and sent a proposal to that effect before Dept. of Heavy Industries, Govt. of India for approval of proposal w.e.f. 01-04-2011. Further, the management sent a proposal letter no. AY/CMD /31 dated 03-08-2011 to the Dept. of Heavy Industries, Ministry of Heavy Industries and Public Enterprises, for enhancement of retirement age of its all employees from 58 to 60 years. That management further vide letters dt. 30-09-2011 and 05-10-2011 to the Ministry of Heavy Industries, appraised that enhancement of age of retirement from 58 to 60 years will not be applicable to the unionised employees in the workmen category placed at the tea garden of the company and who are governed by Plantation Labour Act, 1951 and workmen placed at the factories of the company, who are governed by the Industrial Employment (Standing Orders) Act, 1946.

Accordingly, Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry vide memo no. 10(23)/-2011/PE.1 dated 03-11-2011, accorded approval for enhancement of the retirement age from 58 years to 60 years in respect of Board and Below Board Level and employees of Andrew Yule & Co. Ltd. governed by DPE guidelines with immediate effect. But such enhancement will not be applicable to the employees of Andrew Yule & Co. Ltd. who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. On receiving such memo, the management of Andrew Yule & Co. Ltd. issued an Administrative Circular No. 2012/07 dated 01-03-2012 enhancing the age of retirement from 58 to 60 years for the Board Level and below Board Level Officer and Assistances on the Roll of the company on or after 03-11-2011.

Now, all the five workmen have alleged that all along they were posted at the Head Office of Andrew Yule & Co. Ltd. at Kolkata and which is governed by West Bengal Shops & Establishment Act and DPE guidelines. The Head Office is neither a tea garden governed by Plantation Labour Act,1951 nor a Factory being governed by the Industrial Employment (Standing Orders) Act, 1946. It has also been alleged that there was a tripartite settlement dated 04-02-2011 under Industrial Disputes Act, 1947 in between the management of Andrew Yule & Co. Ltd. and its workmen posted at the Head Office for compliance of retirement age fixed by the Ministry.

They have alleged that in violations of memo no. 10(23)/-2011/PE.1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprises, Dept. of Heavy Industry, they have been retrenched from their respective services on their attaining the of 58 years. That they have raised objection in writing against their premature retirement before the management of Andrew Yule & Co. Ltd. in the year 2012 itself but of no avail. Then they made a complaint before the Regional Labour Commissioner (Central), Kolkata, but who failed to resolve their dispute and referred their matter to the Ministry for making reference before Industrial Tribunal.

That they have alleged that due to premature retirement they have suffered financial loss and they have claimed the losses suffered due to premature retirement and other consequential financial benefits.

The management of Andrew Yule & Co. Ltd. contested the claim of all those five workmen by filing five separate written statements and where it has taken the same stand and alleged that all those five workmen were members of Andrew Yule & Co. Ltd. Workmen's Union (Calcutta Region) and they being unionised employees of the company are governed by tripartite settlement or bipartite settlement executed between the management and their unions. They are not governed by D.P.E. guidelines. That there was tripartite settlement executed between the management of the company and the unions on 04-02-2011 and where it was settled that retirement age of unionised workmen would be 58 years and they would superannuated on the last working days on their attaining the age of superannuation in terms of their date of birth recorded in their Service Books. Such tripartite settlement was in force at the time of retirement of those employees.

It has also alleged that in Andrew Yule & Co. Ltd. there are four categories of employees namely (1) Officer Category, (2) Non-unionised Staff, who are exclusively governed by DPE guidelines, (3) Unionised Staff other than tea garden employees who are governed by tripartite agreement arrived at the intervention of Labour Commissioner and (4) Tea Garden workers governed by Plantation Labour Act, 1951. That Memo no. 10(23)/ 2011-PE-1 dated 03-11-2011 issued by Ministry of Heavy Industries and Public Enterprise, Govt. of India was/ is applicable to the employees of Andrew Yule & Co. Ltd. who comes within the purview of DPE guidelines and those who were /are Board Level, below Board Level and Assistance and not to those employees who are governed by the Industrial Employment (Standing Orders) Act, 1946, Plantation Labour Act, 1951 and unionised workmen.

Further, it has alleged that all the employees were intimated about the date of their retirement in advance by issuing notices to them. That all those employees on receiving such retirement notices made application for final withdrawal of their provident fund. That they were paid their provident fund, leave encashment and gratuity on the date of their superannuation and which they accepted without any objection and that too by issuing receipts to that effect. So, it has alleged that all five case are barred by principle of acquiescence, estoppel and not maintainable. It has prayed for dismissal of all five reference cases.

The concerned workmen have filed rejoinder and where they have invariably reiterated what they have alleged in their claim statements.

All five workmen to prove their cases have filed their evidence in chief on affidavit. That they have tendered their evidence on affidavit and cross examined by the management of Andrew Yule & Co. Ltd.

The management of Andrew Yule & Co. Ltd too has produced Mr. Satyendra Kumar Pandey, Dy. Manager (Personnel & Administration) as M. W.1 and who was extensively cross examined by all the five workmen.

Parties have produced same set of following documents and which have been marked as exhibits. Following documents have been filed from the side of workmen and exhibited:-

1) Appointment letters of Sri Naresh Kumar Chakraborty dt. 13-08-1979 as a Typist, Appointment letters of Sri Mihir Koley dt. 19-03-1980 as a probationer Driver, Sri Joydeb Chatterjee dt. 28-08-1987 as a Typist, Sri Samarendra Nath Mukherjee dt.05-07-1990 as a Durwan and that of Sir Subhash Chandra Naskar dt. 30-09-1985 as a Clerk.

2) Confirmation letters dt.14-02-1980 and 12-03-1982 of Sri Naresh Kumar Chakraborty and Sri Mihir Kr. Koley.

3) Copy of DPE guidelines dt. 19-05-1998 whereby retirement age of below Board Level employees of Central PSEs was raised from 58 to 60 years but on certain conditions,

4) DPE guidelines dt.20-04-2007 whereby retirement age of Board and below Board Level employees of profit earning Central Public Sector Enterprises was enhanced from 58 to 60 years on fulfilment of certain conditions,

5) Extract of minutes of meeting of Board of Directors of Andrew Yule & Co. Ltd. held on 27-07-2011,

6) Copy of letter dt. 03-08-2011 of Andrew Yule & Co. Ltd. in respect of revision of pay scales of Board Level and below Board Level Executives and non-unionised Supervisors and enhancement of retirement age from 58 to 60 years of the employees of company,

7) Copy of company's letter dt.30-09-2011, 25-07-2013 to Deptt. of Heavy Industries, where it was clarified that retirement age of unionised employees in the workmen category, placed at the Tea Gardens of the company being governed by the Plantation Labour Act, 1951 and workmen placed at the factories of the company governed by the Industrial Employment (Standing Orders) Act, 1946 was/ is fixed at 58 years and had enclosed a chart depicting the age of Officers and Assistances of the company with their date of retirement year-wise.

8) The letter dt. 03-11-2011 of Ministry of Heavy Industries & Public Enterprises, Govt. of India addressed to Chairman & M.D., Andrew Yule & Co. Ltd., whereby the retirement age of the employees of Andrew Yule & Co. Ltd. belonging to Board Level and below Board Level and those employees governed by DPE guidelines was enhanced from 58 to 60 years and such benefit was not extended to those employees of Andrew Yule & Co. Ltd. who are governed by the Industrial Employment (Standing Orders) Act, 1946 and those governed by Plantation Labour Act, 1951.

9) Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,

10) The memorandum of settlement dt. 04-02-2011 executed in between management of Andrew Yule & Co. Ltd. and their unions before Regional Labour Commissioner (C), Kolkata,

11) Copy of notices of retirement dt. 13-10-2011 issued to Sri Naresh Kumar Chakraborty, to Sri Mihir Koley who were going to attained the age of superannuation on 31-12-2011, to Sri Joydeb Chatterjee on 22-12-2011 who was going to attain age of superannuation on 31-01-2012, to Sri Samarendra Nath Mukherjee on 26-04-2012 who was going to retire on 30-06-2012 and to Sir Subhash Chandra Naskar on 13-10-2011 and who was going to retire on 31-12-2011.

12) Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,

13) Copy of petition dt.20-07-2012 of Sri Naresh Kr. Chakraborty to Dy. Secretary, Govt. of India, Ministry of Heavy Industries & Public Enterprises,

14) Copy of reply dt. 26-09-2012 by Andrew Yule & Co. Ltd. to Sri Naresh Kr. Chakraborty,

15) Copy of complaint dt.23-05-2012, 30-11-2012, and 04-04-2013 of Sri Naresh Kr. Chakraborty and Sri Mihir Kr. Koley to R.L.C/ A.L.C, Kolkata,

16) Copy of letters of Sri Naresh Kr. Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar to Director, Andrew Yule & Co. Ltd. dt. 26-11-2012 and 04-02-2013

17) Copy of self-prepared list by Sri Naresh Kr.Chakraborty, Sri Mihir Kr. Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar, projecting names of those workmen of Andrew Yule & Co. Ltd. posted at Head Office and who have been retained beyond the age of 58 years.

18) Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013 to ALC(C), Kolkata,

19) Copy of proceeding before ALC (C), Kolkata dt. 20-03-2012 and 02-05-2013,

20) Copy of Andrew Yule & Co. Ltd.'s letter dt.05-10-2011 addressed to Jt. Secretary, Ministry of Heavy Industries showing details of no. of employees of Andrew Yule & Co. Ltd. in the category of Officer governed by DPE guidelines, non-unionised staff governed by DPE guidelines, unionised staff other than tea garden governed by tripartite settlement and tea garden workers governed by Plantation Labour Act, 1951.

On the other hand following documents have been exhibited from the side of management:-

1. Copy of letter dt.03-08-2011 of Ministry of Heavy Industries and Public Enterprises, Deptt. of Heavy Industry addressed to Chairman-Managing Director, Andrew Yule & Co. Ltd. with regard to enhancement of age of retirement from 58 to 60 years in respect of certain categories of the employees of Andrew Yule & Co. Ltd.

2. Copy of letters of settlement of P.F. account dt.20-12-2011, 12-12-2011, 27-12-2011, 21-06-2012 and 12-12-2011 submitted by Sri Naresh Kr. Chakraborty, Workman No.607, Tea Division, Sri Mihir Koley, Sri Joydeb Chatterjee, Workman no.660, Tea Division, Sri Samarendra Nath Mukherjee, Workman No.376 and Sir Subhash Chandra Naskar , Workman No.630 to the Trustee of Andrew Yule & Co. Ltd. Provident Fund Instn. for the Indian Clerical Staff.

3. Copy of mandate forms along with a receipts showing payment of Rs.1,85,656.49, Rs.5,20,847/-, Rs.3,38,350.86P and Rs.3,00,905.12P towards provident fund to Sri Naresh Kr. Chakraborty , Sri Mihir Koley, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar on 30-12-2011, 31-01-2012 and on 30-12-2011.

4. Copy of receipts issued by Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chattrerjee, Sri Samarendra Nath Mukherjee and Sri Subhash Chandra Naskar acknowledging receipt of Rs.2,70,230.33P towards leave encashment for 358 days, Rs.1,71,616/- towards leave encashment for 320 days, Rs.2,62,323.80P towards leave encashment Rs.1,69,630.93P towards leave encashment for 338 days and Rs.2,05,393.60P towards leave encashment for 330 days. It further shows that Rs.4,18,061.54P, Rs.2,97,027.69P, Rs.2,95,836.92P, Rs.1,91,095.38P and Rs.3,05,040/- towards gratuity to them on 30-12-2011, 31-01-2012, 29-06-2012 and on 31-12-2011.

5. Copy of retirement notices dt. 13-10-2011 addressed to Sri Naresh Kr. Chakraborty, Employee no.607 and Sri Mihir Koley, Employee No.288, informing them, their date of retirement on 31-12-2011, Copy of retirement notice dt. 22-12-2011 addressed to Sri Joydeb Chatterjee, , informing him, his date of retirement on 31-01-2012, to Sri Samarendra Nath Mukherjee dt.26-04-2012 informing him his date of date of retirement was on 30-06-2012 and copy of retirement notice of retirement dt. 13-10-2011 to Sir Subhash Chandra Naskar informing him his date of retirement to be on 31-12-2011.

6. Copy of Andrew Yule's letter dt. 24-04-2013 to ALC (C), Copy of ALC's letter dt. 05-04-2013 to Andrew Yule & Co. Ltd.
7. Copy of complaint petition of Sri Mihir Koley to RLC dt.02-04-2013,
8. Copy of letters dt.05-10-2011, 30-09-2011, 19-08-2013, 25-07-2013, 10-07-2013 addressed to Jt. Secretary, Heavy Industries and Public Enterprises, Deptt. of Heavy Industry by Andrew Yule & Co. Ltd. regarding revision in respect of age of superannuation from 58 to 60 years and pendency of Industrial Disputes on the date of retirement of the concerned workmen
9. Copy of appointment letter of Sri Naresh Kumar Chakraborty dt.13-08-1978,
10. Copy of confirmation letter dt. 14-02-1980 addressed to Naresh Kr. Chakraborty,
11. Copy of Memorandum of settlement dt. 04-02-2011.
12. Copy of failure reports dt. 17-05-2013 of ALC to Ministry of Labour & Employment.
13. Copy of letter dt. 30-12-2011, 31-01-2012, 28-06-2012 and 30-12-2011 addressed to Sri Naresh Kr. Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar by Andrew Yule & Co. Ltd. disclosing the statement of their deposit in provident fund,
14. Copy of joint petition dt. 06-07-2012 submitted by Sri Naresh Kumar Chakraborty, Sri Subhash Naskar, Sri Mihir Koley, Sri Joydeb Chatterjee and Sri Samarendra Nath Mukherjee to the Director (Personnel), Andrew Yule & Co. Ltd., Kolkata,
15. Copy of letters of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjjee, Sri Samarendra Nath Mukherjee and Sir Subhash Chandra Naskar dt. 26-11-2012 and 04-02-2013 addressed to the Director (Personnel), Andrew Yule & Co. Ltd.
16. Copy of complaint of Sri Naresh Kr. Chakraborty, Sri Joydeb Chatterjee and Sir Subhash Chandra Naskar to R.L.C, Kolkata dt.30-11-2012 and on 02-04-2013,
17. Copy of letter of Andrew Yule & Co. Ltd. dt. 18-02-2013, 24-04-2013 to ALC(C), Kolkata,
18. Copy of letters dt. 10-07-2013, 05-10-2011 of Andrew Yule & Co. Ltd. to Ministry of Heavy Industries & Public Enterprises , Govt. of India,
19. Copy of notice of retirement dt. 13-10-2011 issued by Andrew Yule & Co. Ltd. to Sri Naresh Ch. Chakraborty,
20. Copy of administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd.
21. Copy of wage policy of Board Level posts and below Board Level posts including non-unionised Supervisors in Public Sector Enterprises w.e.f. 01-01-1997,
22. Copy of letter dt. 26-11-2008 of Ministry of Heavy Industries & Public Enterprises, Deptt. of Public Enterprises with regard to revision of scales of pay w.e.f. 01-01-2007 in respect of Board Level and below Board Level Executives and non-unionised Supervisors,
23. Office memorandum dt.19-07-2007, 20-04-2007 and 26-11-2008 of Ministry of Heavy Industries,
24. Copy of wage policy w.e.f. 01-01-1997,
25. Copy of appointment letter of Sri Joydeb Chatterjee dt. 28-08-1987,
26. Administrative circular dt. 01-03-2012 issued by Andrew Yule & Co. Ltd. increasing the age of retirement from 58 to 60 years only to Board Level and below Board Level and Assistance and not to the other categories of its employees,
27. Copy of letter dt.03-11-2011 of Ministry of Heavy Industries to Chairman, Andrew Yule & Co. Ltd.
28. Copy of petition dt.12-12-2011 of Sir Subhash Chandra Naskar for payment of his P.F. due before 31-12-2011 i.e. prior to his date of superannuation addressed to the Trustee Andrew Yule & Co. Ltd.
29. Copy of ALC's letter dt.05-04-2013 to Sir Subhash Chandra Naskar.

Both sides have also filed their written notes of arguments.

Gone through the oral evidence of all the workmen and that of management witness Mr. Satyendra Kumar Pandey filed in the form of affidavit as well as that have been recorded by the Tribunal along with the documents that have been filed by workmen and management and from where it appears the only issue that need to be decided in the present five reference cases is "whether the age of superannuation of concerned workmen in the category of Typist, Clerk , Driver and Durwan of Andrew Yule Co. Ltd. posted at Head Office, Kolkata was 58 years or 60 years as claimed by them"?

The appointment letters and confirmation letters of those five workmen which have come on record do not disclose what their age of superannuation was at the time of joining the establishment of Andrew Yule & Co. Ltd. However, M.W.1 in his evidence recorded by the Tribunal under oath has admitted that when those five workmen

joined the establishment of Andrew Yule & Co. Ltd., their age of superannuation was 60 years. Further, both sides have admitted that when Central Public Sector Enterprises were declare sick, then Cabinet roll back the age of superannuation of the employees of such sick CPSEs from 60 years to 58 years in respect of all categories of employees duly approved by the Board of Directors of such CPSEs in the month of August, 2001. Such decision was reviewed in April,2005 and decided to enhance the age of retirement from 58 to 60 years only in respect of those employees working in those CPSEs who have started making profit for last three years continuously with positive net worth for last three years as per annual audited report, that CPSEs did not avail any budgetary support during the last three years and who will not avail budgetary support in future and left the decision for the Board of Directors of the CPSE concerned.

Further, the exhibited documents show that Ministry of Heavy Industries by issuing memo no. 10(23)/2011-PE1 dt.03-11-2011 allowed Andrew Yule & Co. Ltd. to enhance the retirement age from 58 to 60 years only in respect of Board Level, below Board Level and those employees who comes within the purview of DPE guidelines, but not to those employees who are governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951. Therefore, here it is necessary to find out who are the employees who fall in the category of Board Level, Below Board Level and those governed by Industrial Employment (Standing Orders) Act, 1946 or Plantation Labour Act, 1951.

It is undisputed fact Andrew Yule & Co. Ltd., a Central Govt. Public Sector Enterprise/Undertaking under the ownership of Heavy Industries, Govt.of India. The majority of products and service offered by it and its subsidiaries are related to heavy industry and engineering and it also owns tea gardens/ tea estates including Hooghly Printing. It comes within the definition of an industry as defined in section 2(j) of The Industrial Disputes Act, 1947 as the establishment where more than 50 employees are engaged. Further, in view of provisions of section 2 (s) any person working in such industry and employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and those Supervisors who draw less than Rs.10,000/- per month and who does not discharge managerial nature of job comes within the definition of workman. The Industrial Employment (Standing Orders) Act, 1946 applies to employees in industrial establishment with 50 or more employees. The Act regulates the condition of employment for these employees.

It is a matter of common sense, a person holding Board Level position in a Public or Private Sector Undertakings indicate such person who holds the position such as Chief Executive Officer, Managing Director, or such person who takes decision on behalf of the Corporation or the person who holds highest level of hierarchy in any organisation or who are part of the Board of Directors of the company.

A Below Board Level employee is an employee in Central Public Sector Enterprises who is not a member of Board of Directors but who holds managerial post and those who do not come within the definition of workman as provided in section 2(s) of Industrial Disputes Act, 1947.

The present five persons being employees of Andrew Yule & Co. Ltd. in the capacity of Clerk, Typist, Driver and Durwan squarely falls within the definition of workman. It is also admitted by all those workmen in their cross examination that they are the members of Andrew Yule & Co. Ltd. (Calcutta Region) Workmen's Union i.e. unionised employees.

It has also come on record that there was a settlement between the different unions of Andrew Yule & Co. Ltd. and the management before the Regional Labour Commissioner (Central), Kolkata on 04-02-2011, under provisions of section 12 (3) of the I.D. Act, 1947. It is noted that two of the workmen namely Sri Naresh Chakraborty and Sri Subhas Chandra Naskar, being the Assistant Secretary and Vice President of Andrew Yule & Co. Ltd. and its Group (Calcutta Region) Workmen's Union, were present and were the signatories of the said settlement. By executing such settlement it was agreed and settled that the superannuation age of unionised workmen of Andrew Yule & Co. Ltd. will be 58 years on and from the closing of business of the last working day of the English Calendar month in which the incumbent attains the age of superannuation in terms of his/her date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment is a Service Condition/ terms for employment for all practical purposes and for all times to come in supersession/ cancellation/ abrogation/ discontinuance of all past practices, systems, procedures, circulars, notices, orders, understanding, settlement/s etc. However, Orders from the Ministry, if any, to be complied with. Provisions in respect of retirement age as contained in the Standard Office Procedure applicable for staff and sub-ordinate staff placed at the Registered Office of the Company stands superseded for all practical purpose.

Permanent employees appointed on any date prior to September 01, 1984, will retire and accordingly the contract of employment by an between the Company and the concerned employee will stand terminated on attaining the age of superannuation i.e. 58 years in terms of the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment on and from the closing of business of last working day of the English calendar year the incumbent attains the age of superannuation. However, in case there is a change in the age of superannuation, the concerned employees will retire on and from the closing of business of the last working day of the English calendar month in he or she attains the age of superannuation according to the date of birth recorded, admitted and incorporated at the end of the Company at the time of commencement of employment

provided the date of birth is other than 1st day of the English calendar month. In case, the date of birth is 1st day of the English calendar month the incumbent will retire and accordingly the contract of employment by and between the company and the concerned employee will stand terminated on and from the closing of business of the last working day of the previous calendar month. Date of birth in respect of each permanent employee/ workman recorded, admitted and incorporated at the end of the company at the time of commencement of employment shall remain unaltered for all practical purposes for all times to come.

It is true that Ministry of Heavy Industry by issuing memo no. 10(23)/2011-PE1 dt. 03-11-2011 had enhanced the retirement age of the employees of Andrew Yule & Co. Ltd. i.e. after the execution of the above settlement on 04-02-2011, but the above memo of Ministry of Heavy Industries has clearly provided that retirement age of Board Level, Below Board Level employees and those employees who are governed by DPE guidelines would be enhanced from 58 to 60 years but such benefit was not extended to those employees of Andrew Yule & Co. Ltd. governed by Industrial Employment(Standing Order) Act, 1946 and Plantation Labour Act, 1951.

Further, Andrew Yule Co. Ltd. by issuing an administrative circular no. 2012/07 dt. 01-03-2012 in pursuance of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries had extended the benefit of enhancement of age of retirement only to the Board Level, Below Board Level Officers and Assistance on the Roll of the company and not to any other categories of employees of the company.

The present set of workmen not being Board Level, Below Board Level or Assistance, but who belong to the category of workman as defined in section 2(s) of I.D. Act, being unionised employees bounded by tripartite settlement dt. 04-02-20211 and employees governed by Industrial Employment (Standing Orders) Act, 1946 are not covered by the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011.

Further, nothing has come on record to show that legality of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and the Administrative Circular no. 2012/07 dt. 01-03-2012, issued by Andrew Yule Co. Ltd. were challenged by the present set of workmen or by any employees of Andrew Yule & Co. Ltd. before any Court of Law. Thus, as per unchallenged memo dt. 03-11-2011 of Ministry of Heavy Industries and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., the present set of workmen have no locustandi to claim benefit of memo dt.03-11-2011 of Ministry of Heavy Industries and Administrative Circular dt.01-03-2012, which exclude them from benefit of enhanced age of retirement being workman category of employees.

Further, the workmen have failed to produce any subsequent settlement executed between the management of Andrew Yule & Co. Ltd. and unions, extending the benefits of memo no. 10(23)/2011-PE1 dt. 03-11-2011 and the administrative circular no. 2012/07 dt. 01-03-2012 issued by Andrew Yule Co. Ltd., superseding the settlement dt. 04-02-2011, where the retirement age of the workman category employees of Andrew Yule & Co. Ltd. was fixed at 58 years and by which they are bounded.

That apart, from the above mentioned exhibited documents, it is seen that all the five workmen were served with notice of their retirement 2/3 months prior to their actual retirement on their attaining age of 58 years by the company. It has come on record that none of those workmen who retired after December, 2011 have raised any objection against notices of retirement served upon them alleging that their retirement age was already enhanced to 60 years by virtue of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries. It is very interesting to note that all workmen have accepted their retirement on attaining the age of 58 years without any qualms and by withdrawing their Provident Fund, accepting leave encashment and gratuity from the management of Andrew Yule & Co. Ltd. on the day they retired from the service. Then, a question may arise, how a workman who has received provident fund, leave encashment and gratuity from the employer can raise a dispute alleging that they have been illegally retrenched /terminated from the service by the employer on their attaining the age of 58 years as contended by them in their claim statements or their retirement was premature as contained in order of reference.

Further, those five workmen have failed to produce any official record and other independent witnesses to prove and corroborate that employees of Andrew Yule & Co. Ltd. in the category of unionised workman posted at Head Office were extended the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries, post their retirement and as shown by them in their self-prepared list and which have been exhibited by them.

In view of the above discussion, this Tribunal is of view all the five workmen being unionised workmen, governed and bounded by the tripartite settlement executed in between the management and unions on 04-02-2011. They being employee in the category of a workman as defined in section 2(s) of Industrial Disputes Act, and governed by Industrial Employment (Standing Orders) Act, 1946 are not entitled to get the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries and which has been given effect only to Board Level, Below Board Level and Assistance by Andrew Yule & Co. Ltd. by issuing administrative circular no. 2012/07 dt. 01-03-2012. Further, all workmen who have honourably acknowledged their age of superannuation on

completion of age of 58 years and who have withdrawn all their deposit in provident fund and accepted leave encashment and gratuity from the employer, the day they superannuated from the service are barred by the principle of estoppel and acquiescence in raising the dispute alleging that they have been prematurely terminated from their services. In fact, this Tribunal holds the dispute raised by all the five employees claiming termination by way of premature retirement without extending the benefit of memo no. 10(23)/2011-PE1 dt. 03-11-2011 issued by Ministry of Heavy Industries to be speculative.

Hence, this Tribunal holds the claims of all five workmen are not maintainable. Accordingly Reference No. 36 of 2013, Reference No. 37 of 2013, Reference No.38 of 2013, Reference No. 39 of 2013 and Reference No. 43 of 2013 in respect of ex-workmen namely Sri Naresh Kumar Chakraborty, Sri Mihir Koley, Sri Joydeb Chatterjee, Sri Samarendra Nath Mukherjee, and Sri Subhas Chandra Naskar of Andrew Yule & Co. Ltd. are dismissed and an award to that effect is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2025

का.आ. 205.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कीधारा 17 के अनुसरण में, केन्द्रीय सरकार **निदेशक, संत लोंगोवाल इंस्टीट्यूट ऑफ इंजीनियरिंग एंड टेक्नोलॉजी (एसएलआईईटी), लोंगोवाल, संगरूर; ग्लोबल कंस्ट्रक्शन कंपनी, नानकियाना चौक, पटियाला बाई पास, संगरूर, पंजाब,** के प्रबंधतंत्र के संबद्ध नियोजकों और सर्कल सचिव, राष्ट्रीय ग्रामीण डाक सेवक संघ पंजाब सर्कल, (बेहाला एस.ओ.), होशियारपुर, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रमन्यायालय-1, चंडीगढ़,पंचाट(संदर्भ संख्या **आईडी नंबर 257/2013, श्री बलजीत सिंह,आईडी नंबर 258/2013, श्री बरजेश कुमार, आईडी नंबर 259/2013, श्री दर्शन सिंह, आईडी नंबर 260/2013, जगसीरसिंह, आईडीनंबर 261/2013, पलाविंदरसिंह,आईडीनंबर 262/2013, श्रीराजूखान, आईडी नंबर 263/2013, श्री मक्खन सिंह, आईडी नंबर 264/2013, श्री सुखजंत सिंह, आईडी नंबर 265/2013, श्री बहादर सिंह, आईडी नंबर 01/2014, श्री सुखदेव सिंह, आईडी नंबर 02/2014, श्री जगतार सिंह, आईडी नंबर 03/2014, श्री बिक्कर सिंह, आईडी नंबर 04/2014, श्री लीला सिंह, आईडी सं. 05/2014, श्री बाला सिंह, आईडी सं. 06/2014, श्री लीला सिंह, आईडीसं. 07/2014, श्री सीता सिंह, आईडी नंबर 08/2014, श्री करम चंद, आईडी नंबर 09/2014, श्री चमकौर सिंह, आईडी नंबर 10/2014, श्री करम सिंह,आईडी नंबर 11/2014, श्री सुखचैन सिंह, आईडी नंबर 12/2014, श्री मेजर सिंह, आईडी नंबर 13/2014, श्री जगसीर सिंह, आईडी नंबर 14/2014, श्री सोमा सिंह, आईडी नंबर 15/2014, श्री बलदेव सिंह, आईडी नंबर 16/2014, श्री गोबिंद सिंह, आईडी नंबर 17/2014, श्री सुखदेव दास, आईडी नंबर 18/2014 श्री भोला सिंह, आईडी नंबर 19/2014, श्री काका सिंह, आईडी नंबर 20/2014, श्री हरनेक सिंह, आईडी नंबर 21/2014, श्री भोलू दास, आईडी नंबर 22/2014, श्री जरनैल सिंह, आईडी नंबर 23/2014, श्री गुरविंदर सिंह, आईडी नंबर 24/2014, श्री लीला सिंह,आईडी नंबर 25/2014, श्री जगसीर सिंह, आईडी नंबर 26/2014, श्री मघर सिंह, आईडी नंबर 27/2014, श्री जग्गर सिंह, आईडी नंबर 28/2014, श्री सतनाम सिंह, आईडी नंबर 29/2014 श्री जग्गा सिंह, आईडी नंबर 30/2014, श्री राम सिंह, आईडी नंबर 31/2014, श्री बहादर सिंह, आईडी नंबर 32/2014, श्री जगसीर सिंह, आईडी नंबर 33/2014, श्री बलजीत सिंह, आईडी नंबर 34/2014, श्री नजर सिंह, आईडी नंबर 35/2014, श्री जगतार सिंह, आईडी नंबर 36/2014, श्री अजायब सिंह,आईडी नंबर 37/2014, श्री जगमिंदर सिंह, आईडी नंबर 38/2014, श्री सुखदेव सिंह, आईडी नंबर 39/2014, श्री बलवीर सिंह, आईडी नंबर 40/2014, श्री मलकीत सिंह, आईडी नंबर 41/2014, श्री बलविंदर सिंह, आईडी नंबर 42/2014, श्री काला सिंह, आईडी नंबर 43/2014, श्री परमजीत सिंह, आईडी नंबर 44/2014, श्री गुरचरण सिंह, आईडी नंबर 45/2014, श्री भीम सिंह, आईडी नंबर 46/2014, श्री नारंग सिंह,आईडी नंबर 47/2014, श्री राज सिंह, आईडी नंबर 48/2014, श्री जरनैल सिंह, आईडी नंबर 49/2014, श्री भोला सिंह, आईडी नंबर 50/2014, श्री लीला राम, आईडी नंबर 51/2014, श्री लाल खान, आईडी नंबर 52/2014, श्री लीला सिंह, आईडी नंबर 53/2014, श्री बलदेव सिंह, आईडी नंबर 54/2014, श्री मिट्ठू सिंह, आईडी नंबर 55/2014, कौर सिंह, आईडी नंबर 56/2014, श्री मेहंगा सिंह, आईडी नंबर 57/2014, श्री बिक्कर सिंह, आईडी नंबर 58/2014, श्री भूरा सिंह 68. आईडी नंबर 59/2014, श्री गुरचरण सिंह, आईडी नंबर 59/2014, गुरचरण सिंह, कामगार,)** को जैसाकि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 12.02.2025 को प्राप्त हुआ था।

[सं. एल-42025-07-2025-39-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th February, 2025

S.O. 205.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. ID No. 257/2013,Shri Baljit Singh , ID No. 258/2013, Shri Barjesh Kumar, ID No. 259/2013, Shri Darshan Singh, ID No. 260/2013, Shri Jagsir Singh, ID No. 261/2013, Shri Plawinder Singh, ID No. 262/2013, Shri Raju Khan,ID No. 263/2013, Shri Makhan Singh, ID No. 264/2013, Shri Sukhjant Singh, ID No. 265/2013, Shri Bahadar Singh,ID No. 01/2014, Shri Sukhdev Singh,ID No. 02/2014, Shri Jagtar Singh, ID No. 03/2014, Shri Bikkar Singh,ID No. 04/2014, Shri Leela Singh, ID No. 05/2014, Shri Baala Singh,ID No. 06/2014, Shri Leela Singh, ID No. 07/2014, Shri Sita Singh, ID No. 08/2014, Shri Karam Chand,ID No. 09/2014, Shri Chamkaur Singh, ID No. 10/2014, Shri Karam Singh, ID No. 11/2014, Shri Sukhchain Singh,ID No. 12/2014,Shri Major Singh, ID No. 13/2014, Shri Jagsir Singh, ID No. 14/2014, Shri Soma Singh,ID No. 15/2014, Shri Baldev Singh, ID No. 16/2014, Shri Gobind Singh, ID No. 17/2014, Shri Sukhdev Dass, ID No. 18/2014 Shri Bhola Singh ID No. 19/2014, Shri Kaka Singh, ID No. 20/2014, Shri Harnek Singh, ID No. 21/2014, Shri Bholu Dass,ID No. 22/2014, Shri Jarnail Singh,ID No.23/2014,Shri Gurvinder Singh,ID No. 24/2014, Shri Leela Singh, ID No. 25/2014, Shri Jagsir Singh, ID No. 26/2014, Shri Maghar Singh,ID No. 27/2014, Shri Jaggar Singh, ID No. 28/2014, Shri Satnam Singh, ID No. 29/2014, Shri Jagga Singh,ID No. 30/2014, Shri Ram Singh, ID No. 31/2014, Shri Bahadar Singh, ID No. 32/2014, Shri Jagsir Singh,ID No. 33/2014, Shri Baljit Singh, ID No. 34/2014, Shri Nazar Singh, ID No. 35/2014,Shri Jagtar Singh, ID No. 36/2014, Shri Ajaib Singh,ID No. 37/2014, Shri Jagminder Singh, ID No. 38/2014 , Shri Sukhdev Singh,ID No.39/2014, Shri Balvir Singh, IDNo.40/2014,ShriMalkit Singh,ID.No.41/2014,Shri Balwinder Singh, ID No. 42/2014, Shri Kala Singh,ID No. 43/2014, Shri Paramjit Singh,ID No. 44/2014, Shri Gurcharan Singh, ID No. 45/2014, Shri Bhim Singh, ID No. 46/2014, Shri Narang Singh,ID No. 47/2014, Shri Raj Singh ID No. 48/2014, Shri Jarnail Singh, ID No. 49/2014, Shri Bhola Singh, ID No. 50/2014, Shri Leela Ram,ID.No.51/2014, Shri Lal Khan,ID No.52/2014, Shri Leela Singh, ID No. 53/2014, Shri Baldev Singh, ID No. 54/2014, Shri Mithu Singh, ID No. 55/2014, Shri Kaur Singh, ID No. 56/2014, Shri Mehanga Singh,ID No. 57/2014, Shri Bikkar Singh, ID No. 58/2014, Bhura Singh, ID.No.59/2014,Shri Gurcharan Singh,ID No. 59/2014, Shri Gurcharan Singh,Worker,** of the **Central Government Industrial Tribunal cum Labour Court-1, Chandigarh,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, Sant Longowal Institute of Engineering & Technology (SLIET), Longowal, Sangrur; Global Construction Company, Nankiana Chowk, Patiala Bye Pass, Sangrur, Punjab, andThe Circle Secretary, National Union of Gramin Dak Sewak Punjab Circle, (Bihala S.O.), Hoshiyarpur,** which was receivedalong with soft copy of the award by the Central Government on 12.02.2025.

[No. L-42025-07-2025-39-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Brajesh Kumar Gautam, Presiding Officer

1. **ID No. 257/2013, Registered on 18.03.2014,** Baljit Singh S/o Teja Singh R/o Village Bhaini, Tehsil and District Barnala.
2. **ID No. 258/2013, Registered on 18.03.2014**, Barjesh Kumar S/o Sh. Kasi Lal R/o Village Tohana, Tehsil and District Sangrur.
3. **ID No. 259/2013, Registered on 18.03.2014**, Darshan Singh S/o Sh. Atma Singh R/o Village Kunran, Tehsil and District Sangrur.
4. **ID No. 260/2013, Registered on 18.03.2014**, Jagsir Singh S/o Sh. Samundar Singh R/o Village Balian, Tehsil and District Sangrur.
5. **ID No. 261/2013, Registered on 18.03.2014**, Plawinder Singh S/o Sh. Samundar Singh R/o Village Balian, Tehsil Dhuri and District Sangrur.
6. **ID No. 262/2013, Registered on 18.03.2014**, Raju Khan S/o Sh. Chanan Khan R/o Village Longowal, Tehsil and District Sangrur.
7. **ID No. 263/2013, Registered on 18.03.2014**, Makhan Singh S/o Sh. Mahinder Singh R/o Village Longowal, Tehsil and District Sangrur.
8. **ID No. 264/2013, Registered on 18.03.2014**, Sukhjant Singh S/o Sh. Najar Singh R/o Village Sahoke, Tehsil Longowal and District Sangrur.
9. **ID No. 265/2013, Registered on 18.03.2014**, Bahadar Singh S/o Sh. Gurdial Singh R/o Village Longowal, Tehsil and District Sangrur.

10. **ID No. 01/2014, Registered on 01.04.2014**, Sukhdev Singh S/o Sh. Mukhtiar Singh, R/o Village Longowal, Tehsil and District Sangrur.
11. **ID No. 02/2014 , Registered on 01.04.2014,** Jagtar Singh S/o Sh. Sukhdev Singh R/o Village Longowal, Tehsil and District Sangrur.
12. **ID No. 03/2014 , Registered on 01.04.2014,** Bikkar Singh S/o Sh. Teja Singh R/o Village Kubbe, Tehsil Longowal and District Sangrur.
13. **ID No. 04/2014 , Registered on 01.04.2014,** Leela Singh S/o Murti Singh R/o Village Longowal, Tehsil and District Sangrur.
14. **ID No. 05/2014 , Registered on 01.04.2014,** Baala Singh S/o Sh. Sadhu Singh R/o Village Longowal, Tehsil and District Sangrur.
15. **ID No. 06/2014 , Registered on 01.04.2014,** Leela Singh S/o Sh. Gurdev Singh R/o Village Longowal, Tehsil and District Sangrur.
16. **ID No. 07/2014 , Registered on 01.04.2014,** Sita Singh S/o Sh. Gurdev Singh R/o Village Duggan, Tehsil and District Sangrur.
17. **ID No. 08/2014 , Registered on 01.04.2014,** Karam Chand S/o Sh. Amar Nath R/o Village Longowal, Tehsil and District Sangrur.
18. **ID No. 09/2014 , Registered on 01.04.2014,** Chamkaur Singh S/o Sh. Karnail Singh R/o Village Longowal, Tehsil and District Sangrur.
19. **ID No. 10/2014 , Registered on 01.04.2014,** Karam Singh S/o Sh. Mohinder Singh, R/o Village Longowal, Tehsil and District Sangrur.
20. **ID No. 11/2014 , Registered on 01.04.2014,** Sukhchain Singh S/o Sh. Gurcharan Singh, R/o Village Jakhepal, Tehsil and District Sangrur.
21. **ID No. 12/2014 , Registered on 01.04.2014,** Major Singh S/o Sh. Gurbaksh Singh, R/o Village Duggan, Tehsil and District Sangrur.
22. **ID No. 13/2014 , Registered on 01.04.2014,** Jagsir Singh S/o Sh. Dharma Sngh, R/o Village Longowal, Tehsil and District Sangrur.
23. **ID No. 14/2014 , Registered on 01.04.2014,** Soma Singh S/o Sh. Mara Singh, R/o Village Longowal, Tehsil and District Sangrur.
24. **ID No. 15/2014 , Registered on 01.04.2014,** Baldev Singh S/o Sh. Gujar Singh,R/o Village Kunran, Tehsil and District Sangrur.
25. **ID No. 16/2014 , Registered on 01.04.2014,** Gobind Singh S/o Sh. Ghuman Singh, R/o Village Longowal, Tehsil and District Sangrur.
26. **ID No. 17/2014 , Registered on 01.04.2014,** Sukhdev Dass S/o Sh. Jagan Dass, R/o Village Longowal, Tehsil and District Sangrur.
27. **ID No. 18/2014 , Registered on 01.04.2014,** Bhola Singh S/o Sh. Babu Singh, R/o Village Longowal, Tehsil and District Sangrur.
28. **ID No. 19/2014 , Registered on 01.04.2014,** Kaka Singh S/o Sh. Joginde Singh, R/o Village Longowal, Tehsil and District Sangrur.
29. **ID No. 20/2014 , Registered on 01.04.2014,** Harnek Singh S/o Sh. Puran Singh, R/o Village Longowal, Tehsil and District Sangrur.
30. **ID No. 21/2014 , Registered on 01.04.2014,** Bholu Dass S/o Sh. Prem Dass, R/o Village Longowal, Tehsil and District Sangrur.
31. **ID No. 22/2014 , Registered on 01.04.2014,** Jarnail Singh S/o Sh. Gurdev Singh, R/o Village Longowal, Tehsil and District Sangrur.
32. **ID No. 23/2014 , Registered on 01.04.2014,** Gurvinder Singh S/o Sh. Bachan Singh, R/o Village Longowal, Tehsil and District Sangrur.
33. **ID No. 24/2014 , Registered on 01.04.2014,** Leela Singh S/o Sh. Darwara Singh, R/o Village Longowal, Tehsil and District Sangrur.
34. **ID No. 25/2014 , Registered on 01.04.2014,** Jagsir Singh S/o Sh. Saun Singh, R/o Village Longowal, Tehsil and District Sangrur.

35. **ID No. 26/2014 , Registered on 01.04.2014,** Maghar Singh S/o Sh. Joginder Singh, R/o Village Longowal, Tehsil and District Sangrur.

36. **ID No. 27/2014 , Registered on 01.04.2014,** Jaggar Singh S/o Sh. Puran Singh, R/o Village Longowal, Tehsil and District Sangrur.

37. **ID No. 28/2014 , Registered on 01.04.2014,** Satnam Singh S/o Sh. Kaur Singh, R/o Village Longowal, Tehsil and District Sangrur.

38. **ID No. 29/2014 , Registered on 01.04.2014,** Jagga Singh S/o Sh. Dhanna Singh, R/o Village Longowal, Tehsil and District Sangrur.

39. **ID No. 30/2014 , Registered on 01.04.2014,** Ram Singh S/o Sh. Sadhu Singh, R/o Village Longowal, Tehsil and District Sangrur.

40. **ID No. 31/2014 , Registered on 01.04.2014,** Bahadar Singh S/o Sh. Bachan Singh, R/o Village Longowal, Tehsil Sunam and District Sangrur.

41. **ID No. 32/2014 , Registered on 01.04.2014,** Jagsir Singh S/o Sh. Dalip Singh, R/o Village Longowal, Tehsil and District Sangrur.

42. **ID No. 33/2014 , Registered on 01.04.2014,** Baljit Singh S/o Sh. Ishar Singh, R/o Village Longowal, Tehsil and District Sangrur.

43. **ID No. 34/2014 , Registered on 01.04.2014,** Nazar Singh S/o Sh. Hamir Singh, R/o Village Longowal, Tehsil and District Sangrur.

44. **ID No. 35/2014 , Registered on 01.04.2014,** Jagtar Singh S/o Sh. Gurcharan Singh, R/o Village Longowal, Tehsil and District Sangrur.

45. **ID No. 36/2014 , Registered on 01.04.2014,** Ajaib Singh S/o Sh. Kundan Singh, R/o Village Longowal, Tehsil and District Sangrur.

46. **ID No. 37/2014 , Registered on 01.04.2014,** Jagminder Singh S/o Sh. Jarnail Singh, R/o Village Longowal, Tehsil and District Sangrur.

47. **ID No. 38/2014 , Registered on 01.04.2014,** Sukhdev Singh S/o Sh. Moti Singh, R/o Village Longowal, Tehsil and District Sangrur.

48. **ID No. 39/2014 , Registered on 01.04.2014,** Balvir Singh S/o Sh. Kartar Singh, R/o Village Longowal, Tehsil and District Sangrur.

49. **ID No. 40/2014 , Registered on 01.04.2014,** Malkit Singh S/o Sh. Biram Singh, R/o Village Longowal, Tehsil and District Sangrur.

50. **ID No. 41/2014 , Registered on 01.04.2014,** Balwinder Singh S/o Sh. Tara Singh, R/o Village Takipur, Tehsil Longowal and District Sangrur.

51. **ID No. 42/2014 , Registered on 01.04.2014,** Kala Singh S/o Sh. Piara Singh, R/o Village Takipur, Tehsil Longowal and District Barnala.

52. **ID No. 43/2014 , Registered on 01.04.2014,** Paramjit Singh S/o Sh. Khetu Ram, R/o Village Bhathal, Tehsil and District Barnala.

53. **ID No. 44/2014 , Registered on 01.04.2014,** Gurcharan Singh S/o Sh. Kundha Singh, R/o Village Bhathal, Tehsil and District Barnala.

54. **ID No. 45/2014 , Registered on 01.04.2014,** Bhim Singh S/o Sh. Telu Singh, R/o Village Kunran, Tehsil and District Sangrur.

55. **ID No. 46/2014 , Registered on 01.04.2014,** Narang Singh S/o Sh. Piara Singh, R/o Village Kunran, Tehsil and District Sangrur.

56. **ID No. 47/2014 , Registered on 01.04.2014,** Raj Singh S/o Sh. Joginder Singh, R/o Village Duggan, Tehsil and District Sangrur.

57. **ID No. 48/2014 , Registered on 01.04.2014,** Jarnail Singh S/o Sh. Roop Singh, R/o Village Duggan, Tehsil and District Sangrur.

58. **ID No. 49/2014 , Registered on 01.04.2014,** Bhola Singh S/o Sh. Joginder Singh, R/o Village Duggan, Tehsil and District Sangrur.

59. **ID No. 50/2014 , Registered on 01.04.2014,** Leela Ram S/o Sh. Mukand Ram, R/o Village Bhani, Tehsil Sunam and District Barnala.

60. **ID No. 51/2014, Registered on 01.04.2014**, Lal Khan S/o Sh. Nek Khan R/o Village Bheni, Tehsil and District Barnala.

61. **ID No. 52/2014 , Registered on 01.04.2014**, Leela Singh S/o Sh. Inder Singh, R/o Village Bhani, Tehsil and District Barnala.

62. **ID No. 53/2014 , Registered on 01.04.2014**, Baldev Singh S/o Sh. Hari Singh R/o Village Japada Pindi, Tehsil and District Barnala.

63. **ID No. 54/2014 , Registered on 01.04.2014**, Mithu Singh S/o Sh. Jagar Singh R/o Village Satauj, Tehsil Sunam and District Sangrur.

64. **ID No. 55/2014 , Registered on 01.04.2014**, Kaur Singh S/o Sh. Harnek Singh R/o Village Badbar, Tehsil and District Barnala.

65. **ID No. 56/2014 , Registered on 01.04.2014**, Mehanga Singh S/o Sh. Mukhtiar Singh R/o Village Ratoken, Tehsil and District Barnala.

66. **ID No. 57/2014 , Registered on 01.04.2014**, Bikkar Singh S/o Sh. Zora Singh R/o Village Harigarh, Tehsil and District Barnala.

67. **ID No. 58/2014 , Registered on 01.04.2014**, Bhura Singh S/o Sh. Kartar Singh R/o Village Amru Kotra, Tehsil Sunam and District Sangrur.

68. **ID No. 59/2014 , Registered on 01.04.2014**, Gurcharan Singh S/o Sh. Tara Singh R/o Village Balian, Tehsil Dhuri and District Sangrur.

.....Workmen

Versus

1. Sant Longowal Institute of Engineering & Technology (SLIET), Longowal, District Sangrur through its Director.

2. Global Construction Company, Nankiana Chowk, Patiala Bye Pass, Sangrur, Punjab.

.....Respondents

Sh. S.C. Gupta AR for Workmen

Sh. Eklavya Gupta AR for Management

Judgment reserved on 7th January, 2025

Judgment Pronounced on 16th January, 2025

JUDGMENT/ AWARD

1. All these Petitions/ cases have been filed separately by individual workmenunder Section 2-Aof the Industrial Disputes Act, 1947(hereinafter called the Act), raising Industrial Dispute and challenging their termination of services by the respondents with effect from 01.11.2011, with a prayer to reinstate them with back wages. Since the respondents in all above cases were common and common points of facts and law arose, vide order dated- 30.10.2014 all the 68 cases have been clubbed together for hearing and **ID case no. 257/2013** was made leading case. It may be noted here that the respondent no.2 did not contest the claims of workmen and no written statement was filed by it during the hearing proceeding.

2.**The case of Workmen/ Petitioners-**As indicated herein above facts of all the claims raised by the different workmen being almost the same,the brief facts of the case as unfolded from the claim statements in the respective cases, may be stated that services of the workmen was illegally terminated by the respondents. As per facts stated in the claim petitions the workmen were employed with the contesting respondent No.1 between the periods from 01.04.1991 to 01-04-2005 (**as different dates of joining are stated in separate claim petitions and in the lead case it is mentioned as 01-04-1996**). It may be mentioned that out of 68 workmen, 59 were doing work of Mali (gardener) and remaining being on the post of helper, welder and plumbers. It is case of all the workmen that their services have been wrongly and illegally terminated by the respondents No.1 and 2 on 01.11.2011. It is alleged that initially they were appointed directly by the Respondent no.1 but subsequently from 1998 onward their services were placed through Respondent No.2 - the Contractor, under whom the workmen were working at the time of alleged illegal termination. The further case of the workmen has been that the nature of jobs of mali, helper welder and plumber is of perennial nature and is essential for the efficient running of the Institute of S.L.I.E.T. which is the Principal Employer of the

Workmen. The contractors were changed from time to time by the Institute. The workmen were carrying out the work which is being carried out by permanent workers. The system of employing workers through a Contractor is a sham and the contractual system has been set up only in order to save the monetary costs of employing the workmen directly with the Respondent No.1 as permanent employees. The cause of prejudice against the workmen by the Management and the Contractors is that the S.L.I.E.T. Trade Union of Workmen through their General Secretary, Jagsir Singh, filed a complaint to the Authorities under the EPF & MA Act, 1952 against the respondent No.1 for non-deposit of the amount into the account of the Workmen for Provident Fund, Family Pension Fund, Insurance Fund & Administrative charges of Employees Provident Fund and Employees Deposit Linked Insurance Fund. Vide order dated 25.06.2010 passed by the Assistant Provident Fund Commissioner, Bathinda under Section 7-A of the EPF & MP Act, 1952, the Respondent No.1/ S.L.I.E.T. was directed to deposit an amount of Rs.17,47,121/- as dues amount for the period from 3/1996 to 10/2009 pertaining to the contractor M/s Punia Security Services, Sangrur. Vide another order dated 11.02.2011 passed by the APFC, Chandigarh, under Section 7-A of EPF & MP Act, 1952, the Respondent No.1 was directed to deposit an amount of Rs.10,45,525/- for the period 3/2007 to 3/2008 pertaining to the M/s Roving Eyes Security and Intelligence Service, Patiala dues on account of the aforesaid benefits. Similarly, vide order dated 08.08.2011, passed by the APFC, Chandigarh the Respondent No.1 was directed to deposit a sum of Rs.1,52,49,131/- for the period from 4/1998 to 3/2008 pertaining to the contractor M/s National Building Construction Corporation Limited, Chandigarh on account of the aforesaid heads of monetary scheme benefits. Further case of workmen has been that being upset with the workers' Union for having exposed the corrupt and fraudulent practices being undertaken by the management- respondent No.1 in connivance with the contractors working for it, and fastening of liability to pay a huge amount, the Respondent No.1 in connivance with the contractors decided to wreak vengeance upon the workman and therefore terminated them in a display of utter vindictiveness. The terminated workmen made representations to the Assistant Labour Commissioner (Central) Karnal and raised claim for reinstatement. Pursuant thereto Conciliation proceedings ensued and the Conciliation Officer took up the matter on various dates, however, since no satisfactory resolution arrived at, due to the obdurate and vindictive attitude of the respondents, the conciliation talks finally broke down and the Ld. Assistant Labour Commissioner (Central) Karnal has disposed of the representations mentioning failed conciliation. It is also of the case of the workmen that they have been in continuous service of the employer/ Management and worked for the mandatory period of 240 days in the year preceding their illegal termination. The cause of action arose to the workman on 01.11.2011 when the workmen were retrenched. Prayer for reinstatement with back wages with interest has been made in all the above noted cases.

3. **The case of Respondent No.1-Management**- In response to notices issued to the Respondents only respondent No.1 appeared and filed its written statement and contested the claims of workmen. According to the case of the respondent no.1 the claim petitions deserve to be dismissed as there was no relationship of employees and employer between the workmen and the management of Institute. It is denied by the Management that the workmen have been ever terminated by the answering respondent/ management. The contesting respondent has denied that the workmen in these claim petitions were directly appointed on different posts of mali, helpers welder or plumbers. According to the case of management the Institutes out sourced the manpower for required job through the contractors. It is denied by the answering Respondent/ Management that the services of workmen were terminated on 01.11.2011. According to the responded no.1 the factual position is that the Respondent/ Management used to float tenders the supply of various workmen - weldor, mali, driver, helper, plumber etc. After examining the competitive rates given by the contractors, the respondent/ management used to give tender to the private contractors. The workmen were engaged by the contractors and at no point of time they were employees of answering Respondent/ Management. The workers employed solely by the contractors. Their attendances are marked by the contractors, their work is supervised by the contractors. The employment, termination and re-employment of workmen is in the exclusive domain of the contractors. In the para-wise reply the contesting respondent no.1 has denied contents of the claim petitions regarding workmen direct employment by the Institute management. In the written statement contesting respondent No.1 has given details of various contractors and the period during which they were engaged. According to the case of respondent no.1 right from the year 1992 practice of floating tenders and engaging contractors for supply of workers for various purpose is going on.The perusal of the contents of the enclosed agreements reveals that the hollowness of the story of employment by the answering Respondent/ Management is cooked up by the workmen. The contesting respondent has stated being unaware of the claim about the exact salary as is contended in the respective claim petitions by the workmen. The case of the respondent in this regard has been that the payment made directly to the contractors as per bill raised by them in accordance with the agreement and it was for the contractors to whatever salary was being paid by them to the workmen. According to the contesting respondent since there has been no employee and employer relationship between claimants /workmen and the management the claim petitions are not maintainable and the workmen are not entitled for reliefs they have sought in respective petitions, therefore their petitions may be dismissed.

4. **Issues:** On the basis of pleadings of the parties following issues are framed to be decided in the present case-

i. **Whether there was Employer-Employee relationship between respondents and the workmen?**

ii. Whether the terminations of services of workmen in these petitions are illegal and in violation of provisions contained in Chapter VA and Section 25-F & G of the Industrial Dispute Act?

iii. Whether the workmen-applicants are entitled for reinstatement with back wages as prayed in respective claim petitions?

iv. What other relief if any in the facts and circumstances of the case?

5. **Evidence:** During the hearing/ trial proceedings of these cases on behalf of petitioners/ workmen, two witnesses have been examined in the lead case ID No.**257/2013** and several documents have been brought on record as exhibits. The witnesses examined in support of workmen are WW-1- Sukhdev Singh (petitioner in ID No.01/2014) and WW-2- Jagsir Singh (petitioner in ID No.260/2013). The documents which have been brought on record through evidence of WW-1- Sukhdev Singh & WW-2- Jagsir Singh are same documents and marked as exhibits as follows:

Particulars	Exhibits
Copy of order dated 25.06.2010 under Section 7-A of EPF Act, passed by Assistant Provident Fund Commissioner, Bathinda.	Ex.W-1/A
Copy of order dated 11.02.2011 under Section 7-A, passed by Assistant Provident Fund Commissioner, Chandigarh.	Ex.W-2/A
Copy of order dated 08.08.2011 passed by Assistant Provident Fund Commissioner, Chandigarh.	Ex.W-3/A
Copy of report dated 27.12.2013 submitted by Assistant Labour Commissioner.	Ex.W-4/A

6. On behalf of Management/ Respondent No.1 one witness Sh. Mandeep Singh has been examined as MW-1 and as many as 19 agreements between Management and different Contractor's for different period have been brought on the record and these agreements are marked as Exhibits Ex.M-1/1 to 1/19 For Management.

7. **Argument on behalf of Workman-Applicant:** Ld. Authorized Representative appearing on behalf of all the workmen in above noted cases submitted that the initial engagement of workmen with respondent No.1 was directly but later on the respondent engaged these workman through contractors in violation of Principal of Labour Laws. The nature of services with respondent No.1 the Principle Employer was of permanent nature and that was the reason Provident Fund Commissioner had directed to deposit various amounts as per different orders for the Employees Provident Fund benefits. It is also argued that no notice of any retrenchment compensation has been given to these workmen before terminating their services. It is argued by Ld. Authorized Representative that even management witness in his deposition before the Court has admitted during his cross examination that work of horticulture, plumber, driver is perennial nature and still available. The management witness has also admitted that there was direction by EPF Provident Fund Authority to deposit Provident Fund, Family Pension Fund, Insurance and Employees Deposit Linked Insurance and the amount was also deposited. It is also argued that management was supervising and controlling the work of these workmen and even a muster roll was maintained by it. The Ld. Authorized Representative pointed out documents which are marked as (H) to demonstrate that there was muster roll maintained by respondent No.1. According to Ld. Counsel in fact the respondent No.1 being principle employer cannot stop workmen from their duties and terminating their services without payment of any compensation or without prior notice of retrenchment is illegal and against the provisions of Labour laws. The Ld. Authorized Representative has in the last submitted that all the workmen who have filed these petitions separately are entitled for the reliefs they have prayed for.

8. Before concluding the argument Ld. Counsel for Workmenappearing in all these above noted cases had pointed out that during the pendency of these ID Cases some of the workmen died, some of them had become over aged for the purpose of their reinstatement. A tabular list was also supplied by the Ld. Counsel for Workmen wherein at Sr. No.1 Baljeet Singh (ID Case No.257/2013) at Sr. No. 21 Major Singh (ID Case No.12/2014), at Sr. No.30 Bhola Dass (ID Case No.21/2014), at Sr. No. 55 Narang Singh (ID Case No.46/2014), at Sr. No.56 Raj Singh (ID Case No.47/2014) and Sr. No.67 Bhura Singh (ID No.58/2014) are shown dead. Similarly, as many as 18 Workmen in different ID cases- 02/2014, 03/2014, 07/2014, 08/2014, 15/2014, 18/2014, 19/2014, 20/2014, 23/2014, 28/2014, 31/2014, 34/2014, 38/2014, 41/2014, 45/2014, 51/2014, 52/2014, 53/2014 and 59/2014 are shown aged above 60 years and more. Ld. Counsel has urged while supplying list of date and over aged workmen that in case the dispute is decided against the management and in favor of workmen in these cases suitable compensation award may be passed in place of order/ award of reinstatement of these dead or over aged workmen. It may be pointed out here that in none of the above referred cases where workmen had died, any substitution application to substitute their legal heirs has been filed so far.

9. **Argument on behalf of Respondent No.1:** The Ld. Counsel appearing on behalf of contesting respondent has submitted that the Institute- Sant Longowal Institute of Engineering and Technology is a deemed University which imparts education in different branches. To run the Institute properly work force are needed by the University which includes work of electricity, gardening, plumbering etc. Since, 1992 the Institute for the purpose of hiring work force used to float tenders and through agreement with different contractors workmen were engaged. It is also argued that the Institute neither engaged these workmen directly nor any wages were paid directly to them. As per the agreement between contractor and Institute the bill was being raised by contractors from time to time and it was being cleared/ paid by the Institute as and when as and when bills were raised. It is argued also that work supervision, attendance and other disciplinary function connected with the hired workmen were exclusive in the domain of respective contractors through which these workmen were hired and at no point of time there was relationship of employees and employer. The Ld. Counsel for the contesting respondent has also argued that Provident Fund Authorities had directed to deposit amounts only because the contractors were not depositing the same with the Provident Fund Authorities and it was the liability of contractors which was discharged by the contesting respondent. During the arguments Ld. Counsel for the respondent pointed out that only for a very short period of two months a muster roll was prepared and maintained by the Institute when there was no contractor engaged neither any appointment letter was given to anyone of the worker nor any termination order has been passed and therefore the claim of workmen in all these petitions are not sustainable and all the petitions are liable to be dismissed.

FINDINGS

10. Points No.*(i)-Whether there was Employer-Employee relationship between respondents and the workmen? (ii) Whether the terminations of services of workmen in these petitions are illegal and in violation of provisions contained in Chapter VA and Section 25-F & G of the Industrial Dispute Act?*Since these two points are interconnected and therefore these are taken together. On the case record of all these cases not a single document purported to be appointment letter/ offer of employment issued by contesting respondent has been brought on the record. The claim of workmen that they were initially engaged by the contesting respondent directly is only oral claim which is denied by the contesting respondent. On the other hand the case of contesting respondent has been that from the very beginning the workmen for the purpose of different works were taken to perform the task through contractors after floating tenders by the management at no point of time these workmen were ever appointed or directly recruited by the contesting respondent. In support of claim the workmen had brought on record certain orders which were passed by Assistant Provident Fund Commissioner against M/s Sant Longowal Institute of Engineering & Technology directing the institute to deposit certain amounts which were assessed as dues on account of provident funds, family pension funds, Insurance Funds and Administrative charges on employees provident fund. A perusal of these orders reflects that the EPF Authority while passing the order has taken note about a provision in the contract regarding deposit of PPF Contribution in reference of workers implied through the contractor but it is also noticed that the Institute never bothered to check whether contractor was having a PF Code or not and also that the Institute never insured before settlement of bill raised by contractor as to whether the PPF Contributions are being deposited or not by the contractor and it appears that in above facts and circumstances the institute was held liable for the assessed dues amount through different orders passed under Section 7-A proceeding of the EPF & MP Act. On the record the contesting respondent has produced agreements between contractors and the management for engagement of workers and therefore it is clear that at no point of time these workmen were engaged directly by the management. Merely because certain orders under EPF & MP Act have been passed against the contesting respondent/ management of Sant Longowal Technical Institute, it cannot be concluded that these workers were employee of the contesting respondent-management. Had there been direct engagement by the contesting respondent some documentary proof must have come on the record but no such documentary proof has been brought on record by the employees. Similarly, the so called termination is also not in writing and has not been produced on the record by the workmen in above noted cases. It is only orally stated that these workmen were terminated from their services since 01.11.2012. The stand of contesting respondent management in this regard has been that neither these workmen were ever engaged directly by the Institute nor they supervised or controlled their work and therefore, there was no question of terminating the services of workmen. According to the stand taken by contesting respondent terminating the services or engaging these workmen was in the exclusive domain of the contractors engaged from time to time for the purpose of various job required in the Institute. From the perusal of agreements which have been brought on the record it is clear that institute used to engage workers through contractors by floating tenders. Even the direction of EPF Authority has been there but infact the liability of contractor was shifted on the institute by passing the 7-A proceeding order under the EPF Act. On the record there is nothing to show as to what happen to these orders passed by EPF Authorities whether they were challenged and set aside in appeal are same remain intact is not clear. The agreement between contractor and Institute clearly stipulates that the Institute shall not be liable to pay any amount/ contribution, compensation under the provisions of ESI Act, 1948, Workmen Compensation Act, 1923, EPF & MP Act, 1952 etc and such amount shall be paid by the agency hired. It appears that when the contractor failed to comply provisions of EPF Act. The authorities directed

institute to deposit the assessed dues. In the present case the workmen have clearly failed to prove the employer-employee relationship and in fact they were engaged to perform different works at the institute through the contractors which were being engaged by the Institute from time to time. I am of the considered view that there has been no employer-employee relationship between the contesting respondent and the workmen. Since there is no evidence on the record regarding the employment of these workmen directly by the institute and also there is no any documentary proof that the institute had ever terminated these workmen by passing order it is not possible for this Court to record finding as to whether the show cause termination was legal or illegal. It appears that these workmen were being hired to perform different jobs through contractors and contractors were therefore, liable for payment of wages to these workmen and thus Point No. (i) & (ii) are decided against the workmen in above noted all the cases.

11. Point No.*(iii) Whether the workmen-applicants are entitled for reinstatement with back wages as prayed in respective claim petitions? (iv) What other relief if any in the facts and circumstances of the case?*While discussing Point No. (i) & (ii) hereinabove this Court has arrived at a conclusion that there was no employer-employees relationship between the contesting respondent-management and therefore, no relief can be granted to these workmen for reinstatement. The contractor Global construction company which is respondent No.2 in these cases is proceeded ex-parte. On the record no evidence has been laid as to whether the said contractor company is still functional or not and therefore, it is not possible for this Court in absence of any evidence on the financial viability of respondent No.2 no compensatory order can be passed in these cases. Therefore, these two points are also decided against the workmen in all above noted cases.

12. In the light of discussion made hereinabove and in the facts and circumstances of the present case, it is-

ORDERED

That all these above noted ID cases leading case being ID No.257/2013 titled as Baljeet Singh Vs. Sant Longowal Institute of Engineering & Technology (SLIET) are dismissed. No relief may be given to these workmen as prayed in the respective claim petitions.

13. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

Dated: 16.01.2025

B. K. GAUTAM, Presiding Officer

नई दिल्ली, 13 फरवरी, 2025

का.आ. 206.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केंद्रिय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं I दिल्ली के पंचाट (223/2015) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आई आर (बी-I)-01]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 223/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* I *Delhi* as shown in the Annexure, in the industrial dispute between the management of CPWD and their workmen.

[No. L-12025/01/2025– IR(B-1) -01]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI No.1 NEW DELHI.

ID. No. 223/2015

Shri. Rajeev Saxena, S/o Late Ashok Kumar Saxena C/o All India Central PWD (MRM) Karamchari Sangathan (Regd), House No. 4823, Gali No. 13, Balbir Nagar Extension, Shahdara, Delhi-110032.

Workman……

Versus

1. The Executive Engineer Dehradun Central Division-1 CPWD, 20, Subhash Road, Dehradun.

2. The Executive Engineer Mussoorie Central Division Lal Bahadur Shastri IAS Academy Mussoorie, Distt. Dehradun.

Management…

Shri Satish Kumar Sharma, A/R for the claimant.

Shri Atul Bhardwaj, A/R for the management.

Justice Vikas Kunvar Srivastava (Retd.)

(Presiding Officer)

1. The Present Industrial Dispute is registered in this Central Government Industrial Tribunal on the application moved by the claimant/workman Sh. Rajeev Saxena under section 2A of the Industrial Dispute Act 1947, which shall herein after be called 'The ID Act' only. Opposite parties to the dispute are -

(i) Executive Engineer Dehradun Central Division-1 CPWD, 20, Subhash Road Dehradun and

(ii) Executive Engineer Mussoorie Central Division Lal Bahadur Shastri IAS Academy Mussoorie, Distt. Dehradun.

FACTUAL MATRIX

2. The workman's claim as emerges from the statement of claim filed on his behalf before this tribunal is that he was initially appointed as Mali/ Helper with effect from 01.04.1996 through contractor for day to day work at Lal Bahadur Shastri IAS Academy, Mussoorie by the management (CPWD). Some issues on differences with management were raised by the workman before conciliation officer, of the Labour Department Dehradun who fixed several dates for their settlement but the management remained adamant and reluctant to cooperate. The union of the workman has given an application to the Conciliation Officer to discontinue running conciliation process and permit the workman to take up the case with Central Government Industrial Tribunal directly under sub section 2 and 3 of section 2A of the ID Act, which was allowed and consequent thereupon the Conciliation Officer issued certificate in that regard. It is stated in the claim that the management has been in usual practice to utilize services of the workmen through several contractors engaged by them from time to time keeping continued the same workman working the same work at the same work place. The service of the workman was illegally terminated with effect from 01.01.2014. Till date of the termination, the workman had already rendered services for a continuous period of much more than 240 days in each year with effect from his initial date of joining. He was issued throughout his continuous service identity card by the contractor forwarded by Junior Engineer concerned which are evidence of his continuity in service as stated above. CPWD and his contractor both have not paid minimum wages to the workman though he was legally entitled for regular pay scale of post of Mali/ Helper in relation to the work performed and duties discharged by him at par with regular Mali/ Helper. This is also claimed that regular sanctioned posts of Malis were available in his division and regular workmen are posted qua sanctioned posts under other divisions of CPWD all over India, who are enjoying the benefits of regular pay scale and allowances. This act of non-payment of regular pay scale is violative of the provisions of Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act)

3. The workman further claims that he fulfills the qualification/eligibility criteria of recruitment rules for the post of Mails/ Helper and was performing his duties continuously under the direct control and supervision of principal employer w.e.f. 01.04.1996 till 31.12.2013, therefore, he is entitled for regularization and to receive the consequential benefits of pay and allowances equivalent to regular counterparts in CPWD in observance of the principal of equal pay for equal work. It is further stated that in the matter of **All India CPWD (MRM) Karamchari Sanganthan Vs. Union of India and Ors.** Vide order dated 26.05.2000 The High Court of Delhi in CWP No. 4817/99 directed the Ministry of Labour for constitution of a board to look into the aspect of contract system prevalent in the CPWD under section 10 of the Contract Labour (Abolition & Regulation) Act, 1970 (CLRA Act). The said board was constituted and recommended for abolishing contract system for 15 posts including the post of Plumber and Helper also. The Ministry of Labour issued the notification u/s 10 of CLRA Act, dated 31.07.2002 in accordance with the recommendation. The same was circulated to all concerned for implementation. The workman complains that the said notification had not been implemented in the CPWD at the level of Executive Engineer Division in violation of labour laws, the workmen were being adversely affected due to non-implementation of that prohibition notification. The matter of non-implementation had been brought to the notice of management by the Union of workman namely, "All India CPWD (MRM) Karamchari Saganthan" raised the issue but the same remained in vain. The purpose of keeping the concerned workman on contract basis and also use of the contractors was with intention to avoid payment of their wages as per Minimum Wages Act. The workman was working directly under the control of the principal employer CPWD and even was unable to know who was his contractor and when the new

contract came into force. The reason behind this unawareness was simple as only the concerned JE/AE were issuing directions to workman for doing works assigned to him as well as supplying materials for completing the day to day maintenance works. JE/AE concerned were the only authority to employ a workman and even to terminate his employment by restraining them from entering physically into premises for any work. The work which was being performed by him is of perennial nature under the principal employer. The contract entered into between the management and contractor is a sham and camouflage. High Court of Delhi in CWP No. 4817/99 (Supra) in its order dated 26.05.2000 had also issued direction for not substituting/terminating the service of such workman even after change of contractor. On the basis of above gamut of facts the workman claims themselves entitled to be reinstated in service w.e.f. the date of illegal termination with full back wages and regularization in service w.e.f. the date of initial employment under the CPWD. He further claims right to receive benefits of pay at par with the regular counterparts in the CPWD as per the provision of CLRA Act, 1970.

4. The claimant in support of his pleadings has submitted documents in evidence viz. letter of conciliation officer certifying that the workman Sh. Rajeev Saxena raised an industrial Dispute under section 2 A of the ID Act which was taken up by conciliation officer on 03.08.2015. As the mandatory 45 days of raising dispute before the conciliation officer has been completed on 21.05.2015 but conciliation could not be arrived at, certificate for filing industrial dispute case was issued (Annexure-1). Further representation of workman Sh. Rajeev Kumar Saxena dated 20.06.2015 against the action of management stopping the workman from discharging his duties on 01.01.2014 with the prayer for reinstating him in service (Annexure no. 2). Annexure no. 3 is the photocopy of identity card issued by establishment management in favour of the workman. Authority letter executed by the workman in favour of General Secretary of the Union Sh. Satish Kumar, Narender Dev & Sunil Dutt Assistant Secretary of the Union of All India CPWD (MRM) Karamchari Sangathan New Delhi, with signature of their acceptance. (Annexure 8) along with letter of espousal of dispute by the Labour Union. Circular letter issued by undersecretary to the Ministry of Labour Union of India communicating minutes of the meeting of the Central Advisory Contract Labour Board held on 22.11.2001 with recommendation of the Board on the basis of majority view that, "the contract workers employed in 22 categories of job enumerated therein including the posts of plumber and helper are such jobs which satisfy the criteria laid down in sub section 2 of section 10 of the CLRA Act, 1970 because they are incidental to and necessary in terms of the responsibility entrusted to the CPWD for maintenance of buildings, plants and equipment under the control of the Central Government. All these are perennial in nature regular workers have been required on the jobs and nature and duration of the job is such the reasonable plumber of old-time workers can be employed accordingly". The aforesaid communication of meeting with recommendation is annexure 5. The notification issued by the Central Government in official gazette regarding recommendation for abolishing the contract in the services of 15 categories as also made annexure with the statement of claim and affidavit in support which consists of 15 categories of job including the post of plumber and helper.

5. The workman has prayed the tribunal on the basis of above facts and benefits following relief:

(i) To pass an award for reinstatement of service of Sh. Rajeev Saxena. Mali/ Helper w.e.f. the date of his illegal termination with full back wages.

(ii) To pass an award for regularization of services of the workman Sh. Rajveev Saxena under the CPWD w.e.f. the date of his initial employment with regular pay and allowances at par with the other regular counterpart workmen.

(iii) Any other relief which may kindly be deemed fit and proper to meet the end of justice.

Defense set forth by the management

6. The management on the other hand in their written statement have contested the claim with preliminary objection to the effect that, there is no relationship of employer and employee and that of a master and servant existing or otherwise exists between claimant and management. Claimant is labour of contractor to whom contract has been awarded by competent authority of CPWD in due course of procedure prescribed by law. Workman had never been appointed nor recruited in the employment by management of the CPWD. If any contract is in between the workman and his contractor the same would abide the contractor, the CPWD authorities are not responsible. The workman along with other workmen was working under the contractor's control and supervision, and even wages were being paid by the said contractor. The claim is not maintainable in view of the judgment passed by Supreme Court in cases v.i.z. **State of Karnataka Vs. Uma Devi & Ors. (2006) 4 SCC 1, Surender Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parisad (Appeal Civil 3981 of 2006.** Management vehemently pleads that in view of para 34 and 36 of the judgment in **Uma Devi case (Supra).** Unless the appointment is in terms of relevant rules and after the proper competition amongst qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointments come to an end at the end of the contract, if it were an engagement or appointment on daily wages of casual basis the same would come to an end when it is discontinued. It is further impressed that the workman who had accepted the employment with open eyes, one has to proceed on the basis of that the

employment was accepted fully knowing the nature of it and the consequences flowing from it, his claim is not maintainable. The management denies that one who has been working for some time on any post he will have right not to be discontinued.

7. In addition to the above preliminary objections and the maintainability of claim. The management has further denied that the workman has put in 240 days regular service in each year w.e.f. his initial date of joining till illegal termination as alleged. According to the management the workman was not their employee hence the question of working 240 days in their establishment does not arise. They have specific pleading that neither the management of CPWD nor the contractors engaged for hiring the services of the workman have paid wages lessor than minimum wages to the workman and he is not entitled to regular pay scale of the post of Mali/Helper as alleged. According to them the workman never complained about the payment of wages below minimum wages rates to the office of the management. They further denied that the workman was performing his duties continuously under the principal employer w.e.f. 01.4.1996 till 31.12.2013therefore, entitled for regularization in services as alleged.

8. The management further submits that they have well defined procedure with regard to the selection of contractors through whom thousands of employees work for the establishment. They have selected genuine contractor, entered with him agreement genuinely and overall performance of the contractor is monitored by a team of engineers and the executive engineer concerned. The workman had also been fired by the contractor directly for any fault in his duties, if any, the true fact is that the official of answering management has no control over the workers of the contractor. Moreover, the management CPWD cannot force the contractor to retain the same worker who were engaged by the earlier contractor. They further have specifically denied that workman is entitled to be reinstated in service w.e.f. the date of initial employment under the CPWD. It is stated that workman is not unemployed as alleged and that since the workman was never engaged by the department the question of regularization does not arise and he is not entitled for any relief.

Issues framed for adjudication

9. On the basis of above facts pleaded by the contesting parties of the present industrial dispute on 27.05.2016 following issues were framed.

(i) Whether termination of the job of the claimant by the management is wrong and illegal and as such claimant is liable to be reinstated, as alleged?

(ii) Whether the services of the claimant is liable to be regularized form the date of his initial employment, as alleged?

(iii) Whether there is no relationship of employer/employee between the claimant and the management?

(iv) *Whether the petition is not maintainable in view of preliminary objections?*

10. In view of the issues framed by the tribunal the first point of determination in the present industrial dispute, prior to adjudicate dispute relating to termination of service, if illegal and other consequential reliefs thereto, would be the question as to the maintainability of the workman's claim which is raised in issue no. 3 & 4. Unless there exists relation between the claimant and the opposite party (management) of workman-employer this tribunal will have no jurisdiction to entertain the claim for the purpose of adjudication under the ID Act. The pivotal question in present industrial dispute is legality of termination of service of the workman by the management. If termination of services in the facts found illegal, then his entitlement to be reinstated may be considered, likewise on positive answer to the question of reinstatement next question whether with or without back wages may be answered. The determination of the right of workman for regularization is contingent upon his reinstatement in services of the management. Tribunal has to look into not only pleadings of the parties to the industrial dispute but also evidences oral and documentary adduced before it.

11. Perused the documentary evidence placed on record by the litigating parties to the industrial dispute in hand. Perused the oral evidences of witnesses of claimant and management. Heard the arguments. Parties have filed their written argument also.

12. Management has relied on decision of the Supreme Court and High Court in support of their argument;

(i) Workman V. Coates of India Ltd.'s (2004)3 SCC, 547

(ii) Haldia Refinery Canteen employee's union V. Indian Oil Corpn, Ltd (2005) SCC 51

(iii) Balwant Rai Saluja Vs. Air India Ltd., (2014) 9 SCC 407

(iv) Dhrangadhra Chemical Works Ltd. V. State of Saurastra, AIR 1957 SC 274

(v) Ram Singh V. Union Territory, Chandigarh, (2004) 1 SCC 126

(vi) Bengal Nagpur Cotton Mills V. Bharat Lal (2011) 1 SCC 635

(vii) Workman of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N., (2004) 3 SCC 514

(viii) State of Karnataka V. Uma Devi & Ors [2006 (4) SCC 1

(ix) Union of India & Anr V. Arulmozhi Iniarasu & Ors (2011) 9 S.C.R. 1

Whereas, no case law has been referred or relied on during the argument on behalf of the claimant. Having gone through the case laws cited by the management I, proceed to discuss the issue involved in the present matter in succeeding paras.

13. In oral evidence the concerned workman has submitted himself as claimant/witness WW1 and placed on record his affidavit in examination in chief as Ex. WW1/A. He is subjected to cross examination on Dec 18, 2017 and cross examined. He reiterated his averment in claim statement and stood firm and consistent thereon in cross examination which shall be discussed in forth coming paras wherever required.

Relationship of employee (workman) and the employer (Management) in the present case.

14. The claimant claims himself that he has been throughout his employment as contractual workman doing the work, discharging his duties under the control and supervision of CPWD through its authorities. It is also stated by the workman that the management has been in usual practice to utilize services of the workman through several contractors engaged by them from time to time keeping continued the same work at the same work place. He states that with effect from the initial date of his employment i.e. 01.04.1996 his services were utilized as contractual workman of CPWD till date of his termination w.e.f. 01.04.2014. In their pleading, management though has denied existence of employer and employee relationship with the concerned workman but his engagement as contractual labour is not denied. Management pleads that claimant is labour of contractor to whom contract had been awarded by the competent authority of CPWD in due course of procedure prescribed by the law. Further the management has stated that the claimant has never been appointed or recruited in the employment by the management of CPWD and if any contract between the workman and the contractor exists, the same is not binding upon CPWD authorities. The management in explicit and unequivocal terms has admitted in written statement that concerned workman along with other workmen was working under the direct control and supervision of the contractor and even wages to them was also paid by the said contractor. Vehemence is placed on Para 34 & 36 of the judgment of Hon'ble Apex Court in the **State of Karnataka Vs. Uma Devi & Ors. (Supra)** highlighting the pleading in written statement that in the absence of appointment and recruitment the management the concerned workman on the basis of his contractual appointment does not have any right as workman of the CPWD.

15. When deployment of the concerned workman in the premises of the management though as contractual labour since 01.04.1996 till the end of his disengagement on 01.01.2014 is not denied and even admitted fact that the management has been in usual practice throughout in aforesaid period to engage workmen through several contractors engaged by them from time to time. It is also not specifically denied that work used to be done continuing the same workman working the same work at the same workplace, the tribunal has to examine whether utilization of claimant's labour and services by the management throughout the aforesaid period of his employment as contractual labour shall create relationship between him and the management as employee-employer. The Industrial Dispute Act defines 'workman' in following terms of section 2(s):

2 (s) "workman" means <u>any person</u> (including an apprentice) <u>employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied</u>, and for the purposes includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air force Act, 1950 (45 of 1950), or the Army Act, 1950 (46(of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service of as an officer or other employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

16. According to the definition of workman 'any person' employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward shall be treated as workman for the purposes of any proceeding under the ID Act in relation to an industrial dispute like dismissal, discharge or retrenchment which had held that dispute provided such person does not fall in any exceptional category specified in definition from (i) to (iv) under section 2(s) of the ID Act.

17. In the "Contract Labour (Abolition and Regularization) Act", 1970 (the CLRA Act) definition of workman is also inclusive of contractual labours.

18. In Section 2(1) (b) of the CLRA Act, 1970 *"a workman shall be deemed to be employed 'as contract labour' in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of principal employer".*

Thus, in accordance with the aforesaid definition the claimant whose services is admittedly hired by the management of CPWD through a contractor the CPWD shall be treated as employer in relation to the claimant a workman.

Section 2(1) (c) defines 'contractor' also as under.

Sec 2 (1) (c)'Contractor "'in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor".

19. Admittedly, the workman/claimant is contract labour whose services is hired by the CPWD through the contractor therefore, CPWD shall be treated as principal employer in relation to the claimant/workman.

The CLRA Act further defines the "Principal employer" in section 2 (1) (g) which runs as under-

Section 2(1) 'Principal employer' (g) means (i). in relation to any office or department of the Government or a local authority, the head of that officer or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf,

(ii)…….

(iii)…….

(iv)…….

20. There are oral and documentary evidences also in addition to the admitted fact of the claimant/workman working as contract labour in the establishment of management CPWD. The claimant/workman Sh. Rajeev Kumar Saxena deposed on oath before the tribunal as witness and submitted on oath in the affidavit that, he acted on day to day labour basis as mali/helper in the campus of the management under direct control and supervision of one junior engineer of CPWD who used to take his attendance also. The witness was subjected to cross-examination by the management who did not carved out anything against the above statement on oath. He specifically denied the suggestion during cross examination that he was working through the contractor. In cross-examination he stands firm and reasserted that his wages were paid by the JE of the CPWD. He proved Ex. WW1/3 the entry pass issued to him as contract labour for entry in the premises of the CPWD where he was posted to work. He further denied that he was paid his wages by the contractor in cash and his work was supervised by him only. MW1 the management witness Sh. Prashant Singh admits in cross examination dated 21.08.2019 that Ex WW1/3 was issued by CPWD to the claimant on receiving the letter from contractor to make deployment of the workers and issuance of the gate pass. He also admitted as correct that for last more than 10 years the post of mali remains vacant in the division and the workman engaged as contractual workmen through the contractor is covered by the notification of prohibition of contract labour. He further admits as correct that daily or casual labour were not issued any letter of appointment.

21. The above pleadings and evidences when taken cumulatively they show and establish that there exist unambiguous relationship of workman and principal employer, between the claimant/ workman and the management CPWD and they have a relation of employer-employee in terms of the Industrial Dispute Act section 2(s) as well as with the deeming effect under section 2 (1) (b) of the CLRA Act 1970.

22. The recommendation of Central Advisory Board of the Appropriate Government made before issuance of notification under section 10 of the CLRA Act and other evidences of the management itself show that they had post of the helper/plumber vacant for a considerably long period of 10 years. The claimant has established through evidence that during the entire period he was working as contract labour on the above vacant post without having been issued any letter of appointment.

23. Formally, the appointments are made through prescribed recruitment agencies but exigencies of work may sometimes call for making appointments on adhoc or temporary basis. In the present case the claimant has pleaded that he possessed at the time of his initial engagement the requisite qualification and eligibility required for the post of plumber/helper. This is not explained and clarified by the management that what exigencies occurred before them not to fill up the post by regular appointment and to continue utilizing the service of the concerned workman as contract labour on the vacant post. In the **State of Haryana Vs. Piara Singh AIR 1992 Supreme Court 2130** The Supreme Court held that though the normal rule is recruitment through the prescribed agencies but due to administrative exigencies an adhoc or temporary appointment may be made. If

casual or temporary or adhoc appointment were made against sanctioned posts and the policy is fell vacant for a long period without filling up those post on a regular basis then the Courts has reason to interfere. In **Rattan Lal vs. State of Haryana AIR 1987 Supreme Court 478** Hon'ble Supreme Court held that such situation cannot be permitted to last any longer.

24. The case of Uma Devi (Supra) which lays down that there should be no back door entry and every post should be filled by regular employment with terms of relevant service rules does not apply to the facts of present industrial dispute because it has severally been judicially noticed that in spite rigor of Uma Devi case (Supra) the same was being ignored and conveniently overlooked by various states by making appointments on contract/daily wage basis without due payment of salary. In **Shiv Narain Nagar and Ors. Vs. State of U.P and Ors. (2018) 13 SCC 432** the Apex Court held that since the management themselves have conferred temporary status to the employees even when there was requirement of work and availability of post, consequently there was no case of back door entry since there were no recruitment rules governing such situation then their appointment cannot be said to be illegal or in contravention of rules.

25. In the present matter where the workman is engaged directly or through a contractor as contract labour by an employer and the services is discharged, terminated or retrenched against the provision of Industrial Dispute Act the matter shall be governed under the provisions of Industrial Dispute Act, 1947 and other legislations connected therewith.

26. The present industrial dispute is brought before the tribunal for the purpose adjudicating disputes as to claim of workman for regularization in services of the management who have completed the required period of continuous services 240 days in every year prior to the termination of his services and for reinstatement of his services. Therefore, the present dispute comes within the definition of 'Industrial Dispute' as define in section 2 (k) of the Act.

2 (k); "*industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".*

27. On the basis of discussions, made hereinabove the issue no 3 & 4 are positively decided in favour of the workman/claimant and against the management. The workman/claimant and the management were in relation of employee and employer. The present industrial dispute is maintainable before the Central Government Industrial Tribunal under the industrial dispute act for adjudication of the claim of the workman.

Discussion on issue no 1 & 2

Contractual workman through the contractor in continuous services

28. The claimant's case of initial date of employment 01.04.1996 as daily wager on contract basis in the services of management CPWD as Helper/Mali in their premises is not specifically denied in written statement. Likewise, the fact of termination of claimant's services w.e.f. 01.01.2014 is also evasively replied on the pretext of want of knowledge as he was employed by contractor. Moreover, it is admitted that the concerned workman was employee of contractor from whom his labour and services were hired by the management.

Want of specific denial, instead vague denial and consequence

29. General rule of pleading requires the burden of proof on the party to a his who pleaded a fact as ground of claim or defense as the case may be, but such burden arise when that fact is specifically denied by opponent. Failure of the management to specifically deny the fact of initial date of employment with CPWD would make the allegation in this regard made in the statement of claim as admitted against management. Principle of pleadings propounded in Civil Procedure Code, 1908 equally applicable to pleadings in all legal proceedings whether judicial or quasi-judicial. Order VIII R 3 & 5 of Civil procedure Code 1908 clearly provides for specific admission and denial of the pleading in the plaint. A General and evasive denial amounts deemed admission of the fact. In such an event the admission itself being proof, no other proof is necessary. (**Supreme Court in Jaspal Kaur Chema and Another V. Industrial Trade Links and Others (2017) 8 SCC 592** of which Para 7 is quoted below:

Para 7 In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short "the Code"), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in Badat and Co. v. East India Trading Co. [Badat and Co. v. East India Trading Co., (1964) 4 SCR 19: AIR 1964 SC 538], Sushil Kumar v. Rakesh Kumar [Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673] and M. Venkataramana Hebbar v. M. Rajagopal Hebbar [M. Venkataramana Hebbar v. M. Rajagopal Hebbar, (2007) 6 SCC 401]

30. The MW1 (management's witness) during his oral examination stated on oath when cross examined that, the

post against which claimant asserts to have worked remained vacant for last 10 years without regular appointment. He further states that CPWD's competent authorities used to enter into contract with Contract Labour providers to do works in the department. Thus, in the absence of specific denial and presence of direct admissions on record with deemed admissions by virtue of evasive denial of the fact coupled with evidence of MW1 as to the availability of concerned post and work qua which the claimant claims his employment as contractual labour and utilization of his services by the management as such since 01.04.1996 till 01.04.2014 it is found established. This is importantly noteworthy that management has not denied eligibility and qualification which the claimant pleaded to possess at the time of his initial engagement with CPWD in their premises through a contractor.

31. The management in their pleading asserted the contract with concerned contractor who provided them contractual workmen including the claimant genuinely entered into following all prescribed procedures by competent authorities. This makes the employment of claimant as contractual workman legal emanating benevolence of the protective provisions of the Industrial Dispute Act relating to regularization in and termination from service. Section 25 B under the chapter V.A. of Industrial Dispute Act which governs retrenchment defines the continuous service as under Section 25 B

Section 25B. Definition of continuous service for the purpose of this chapter -

1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer —

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation—For the purposes of clause

(2), the number of days on which a workman has actually worked under an employer shall include the days on which —

(i)He has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

32. Since nothing is pleaded by the management in their written statement against the uninterrupted utilization of claimant' services except the specific plea of his being employee of the contractor has no right to be treated as employee of the management therefore, it is held that claimant had been in Continuous service of the management as contractual workman since 01.04.1996 to 01.04.2014. This would be noteworthy here that claimant has successfully discharged his burden to establish his relation with employer on the basis of number of days he has served as held by the Apex Court in state of **Uttrakhand Vs. Suresh wati 2021(168) FLR 488 (SC) and Bengal Nagpur Cotton Mills, Rajnand Gaon Vs. Bharat Lala and Ors. (2011) 1 SCC 635.**

Prohibition of employment of contract Labour

33. Before proceeding to discuss the prohibition of employment of contract Labour it would be pertinent to quote section 10 of The CLRA Act which is under

Section-10 Prohibition of employment of contract labour-

(*1*) *Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.*

(2) *Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-*

(a) *whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;*

(b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

34. Exhibit WW1/5 (Colly), filed and proved by the claimant and admitted also by the management, is minutes of the meeting of the Central Advisory Contract Labour Board constituted by the Appropriate Government in terms of the section 10. The CLRA Act published on 18.12.2001 which recommends twenty number of posts for abolition of contract labour system in the establishment of CPWD which are-

1. AC Mechanic.
2. AC Operator.
3. AC Khalasi/helper.
4. Electrician.
5. Wireman.
6. Khalasi (Electrical).
7. DG Set Operators.
8. Pump Operators.
9. Fire Pump/fire alarm Operator.
10. Carpenter.
11. Mason.
12. Fitter.
13. Plumber.
14. Enquiry Clerk.
15. Helper/Beldar.
16. Mechanic.
17. Sewerman.
18. Sweeper.
19. Foreman.
20. Lift Operator.

35. As the board reached at opinion that the jobs under consideration are of perennial nature and must go from day to day. Further the board has opined in its recommendation, “CPWD wing of the Central Government has been created to undertake construction and maintenance of buildings, equipments and plants within such buildings complex of the central government. In the majority of cases they are engaged in the business of maintenance of building of regular establishment of the central government on continuous basis. In effect the function of the owner of these buildings relating to maintenance has been assigned to CPWD”. The board has further recorded in its aforesaid recommendation that, CPWD have admitted that the works are being done through contractors for regular man power did not available due to non-recruitment and have also not denied that regular workers have been deployed in the jobs. It is also recorded that the volume and duration of work is not insufficient. No instances have been cited by the CPWD wherein the yearly contracts have not been renewed and the work therefore, is of uncertain nature to employ considerable number of workmen.

36. Exhibit WW1/5 (Colly) includes the notification dated 31.07.2002 in the official gazette of India and prohibited employment of contract labours in the process, operation or work specified in the scheduled appended therewith in exercise of powers conferred by sub section (1) of section 10 of the CLRA Act. The schedule consists of following 15 categories of work-

1. Air conditioner Operator.
2. Air conditioner khalasi/helper.
3. Electrician.
4. Wireman.
5. Khalasi (Electrical).
6. Carpenter.
7. Mason.
8. Fitter.
9. Plumber.
10. Helper/Beldar.
11. Mechanic.
12. Sewerman.
13. Sweeper.
14. Foreman.

Employment of contract labour by CPWD opposed to law

37. The claimant in his statement of claim has clearly stated that he was initially appointed as mali/helper w.e.f. 01.04.1996 through contractor for day to day work at **Lal Bahadur Shastri IAS Academy, Mussoorie**, and the contractors engaged for hiring the services of contractual workmen were being replaced from time to time by the management of CPWD. The workman was continuously working the same work at the same place prior to termination of his services till 31.12.2013. The notification dated 31.07.2002 has been circulated by the Ministry of Urban Development/Director General of works CPWD for implementation which is Ex. WW1/6 proved by the claimant and also admitted by the management. In his statement the workman further states, the work which was being performed by him is of perennial nature under the principal employer. And that contract entered into between the management and the contactor is sham and camouflage. In written statement the said notification of the central government issued for prohibition of contract labour in aforesaid categories of work not denied but is admitted in evidence. Likewise, the fact of entering into contract for supply of hiring of labours (workman) including the present workman is not justified despite the fact they were squarely covered from the notification of prohibition of contract labour. It is also not explained in pleading and evidence that why the CPWD had not implemented the said notification for abolition of contract labour on 15 posts though brought into notice of the CPWD by Union of Workmen nothing was done by the CPWD. It is pleaded, impressed in affidavit of evidence that contractors were being used only for the purpose of getting payment of remuneration from them payable to the workman and the workman was engaged directly under the control of the principal employer and most of the time the workman was not aware of the contractor and when the new contract came into force. These facts are not denied specifically are by necessary implication in the written statement of the management. The claimant in his affidavit submitted in examination in chief before the tribunal deposed the above facts but in cross examination nothing could be elicited to the contrary by the management. In his cross-examination dated 18.12.2017 the claimant/workman has very clearly stated that he was terminated by Sh. "Gopal Singh Bhakuni, Assistant Director of the CPWD", he was appointed on 01.04.1996 and terminated from service on 01.01.2014.

38. Explaining the expression "Control and Supervision" the Apex Court in the case of ***International Airport Authority of India V. International Air Cargo workers and another (2009) 13 SCC 374*** in Para 38 & 39 of the judgement laid down the tests to find out that in fact there is a direct employment. It has further been observed in Para 38 & 39 as under: -

> ***"38"*** *The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*
>
> ***"39"*** *The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the*

worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but this is secondary control. The primary control is with the contractor.

Management (CPWD) whether principal employer in relation to the claimant

39. CPWD is undisputedly a department of Central Government Section 2(g) of The Contract Labour (Regulation and Abolition) Act, 1970, in brief CLRA Act defines, principal employer means in relation to any office or department of government any person responsible for the supervision and control of the establishment. Further, in the context of present industrial dispute the "contractor" as defined in section 2(1) (c) of the CLRA Act, means and includes a person who supplies contract Labour for any work of the establishment. The case of the management is that claimant was hired under a contract duly entered with contractor for supply of contract Labour.

40. It is not the case of the management that they entered in contract with any person who undertakes to produce a given result for the establishment. Though, management had burden of proof but did not discharge the same by adducing evidence as to the terms of contract, neither the deed of contract entered with contractor itself is produced and proved, nor any contractor is examined in support of the control and supervision over the work to be done by a contract Labour supplied by him who is deployed in the premises of management in connection with their work. The claimant in his statement in chief examination as well in cross examination has stated consistently that he was issued entry pass in premises of the management, his attendance was checked and works to be done were instructed and supervised in daily routine by a junior engineer of the establishment. Payment of wages were also made by the establishment accordingly. The management being in possession of the best evidence like book of account entering payment of wages to contractual workmen whether directly or through the contractor failed and more properly to say skipped to produce and prove before the tribunal. An adverse inference therefore, in the above context may be drawn against the management that they were in direct control, supervision and in payment of wages of contract laborers working in the establishment.

41. In **Nil Giri Co-op. Marketing Society Ltd V. State of Tamil Nadu 2004 last suit (SC) 142** where the facts were similar as in the present case the Apex Court has observed as under.

> *It is submitted by the Respondents- Unions that, the documents executed between petitioner and the Contractors are bogus, sham, concocted, fraudulent and inadmissible in evidence. The same have been prepared to avoid the statutory liability to give permanency benefits to these workmen and to deprive them of their legitimate rights of equal work equal pay at par with the permanent employees of the petitioner. They submitted that, many alleged contractors have come and gone in last 20 years but the concerned workmen involved in the Reference have been continued in service. Had these concerned workmen been the employees of somebody else, their service would have been terminated at the time of changing the contractor and or terminating the earlier alleged contracts with the contractors.*
>
> *The learned counsel for the Unions contended that though the notification dated 9th December, 1976 may have been abolished, however the notification dated 30th January, 1996 is very much in existence. The said notification is in respect of the Petitioner Company. The said notification covers the workers in this petition who are working in the establishment of the Petitioner. Though, the members of the Respondents are covered by the notification dated 30th January,1996, however, in breach of this notification, the petitioner continues to employ contract labour including the workmen concerned with this petition. Out of the 37 employees, 21 are working as a valve operator, 13 are working in housekeeping in plant area and 3 are working as helpers (Maintenance), all of which as per the 1996 notification are prohibited jobs. The employment of contract labour in specified jobs was prohibited as per the notification w.e.f. 01st March, 1996, yet the Petitioner continues to treat the workmen concerned as contract labour. The learned counsel for the Respondents submitted that nowhere in the evidence, the petitioner has denied that the workmen concerned are not squarely covered by the notification dt. 30th January, 1996.*

The Apex Court has held that question whether employee of principal employer of contractor is pure question of fact deserve to be decided by tribunal on the basis of evidence on record. Likewise, question whether the contract was a sham a camouflage is also a question of fact, to be decided by tribunal by piercing the veil, having regard to the provision of the Act when a definite plea is raised.

42. Notification issued by the central government on 04.07.2002 produced in evidence by the claimant, nothing is said against that by the management in their pleading hence the tribunal has taken judicial notice of prohibition

of contract Labour in categories of work mentioned therein. Nowhere in their pleading and evidence the management has denied that the workman concerned is squarely covered with the notification under section 10 of the CLRA Act. The post of helper and plumber both are enumerated at serial no. 9 and 10 in the notification of prohibition issued under section 10 of CLRA Act dated 31.07.2002 as category of work where upon contract labour is prohibited. It is not denied that as contract labour the concerned workman's services were utilized by the CPWD. The workman has also proved in his statement before the tribunal in evidence that his services were utilized as helper/mali and with plumber also. He further states that his services were utilized day to day by the junior engineer who after taking attendance used to send him with either plumber, mason, carpenter etc. to redress complaints as helper and eventually work of Mali was also done by him on being deployed as such. He has completed in each and every year since the date of his initial engagement till termination of service that is to say 01.04.1996 to 31.12.2013 continuous service of more than 240 days. He had stated on oath that he was paid the salary by the junior engineer getting his signature on blank voucher in cash. In cross-examination the management has not elicited and carved out anything in rebuttal and contradiction of the said facts. Even, in cross-examination dated 18.12.2017 the claimant witness denied the suggestion by saying that it is wrong that I had never worked 240 days in a calendar year. It is wrong to suggest that I was working through the contractor. My wages were paid by JE of the management. Management had not produced documentary evidence in support of their pleading and arguments despite opportunity afforded.

Documents relevant to the issues summoned from the management- Not produced

43. The workman, before parties enter into the stage of leading evidence moved an application on 20.09.2016 para 2 whereof contains eight numbers of documents to be summoned from the management for production before the tribunal. For the purpose of easy reference, the said para 2 along with the details of documents sought to be summoned for production by the management are given here under: -

1. Copies of agreements since 1.4.1996 till date (Lal Bahadur Shastri Academy)
2. Original copies of letters of contractors written for the purpose of issuing photo passes to allowing them to enter into premises for completing day to day maintenance works.
3. Copies of proof of work assigned to the workman by the engineer-in-charge.
4. Copies of attendance registered since 1.4.1996 till date (LBS Academy Mussoorie Site of Works) as per agreement signed between the principal Employer and contractor.
5. Copies of salary register maintained by the contractors since 1.4.1996 till date (LBS Academy Mussoorie Site) as per agreement signed between the principal employer and contractor.
6. Copies of appointment letter issued by the contractor to the workmen as per agreement signed between the contractors and principal employer in respect of LBS Academy Mussoorie site.
7. Copies of wage card/slips issued by the contractors to the workmen since 1.4.1996 till date as per agreement signed between principal employer and contractors in respect of LBS Academy Mussoorie site.
8. Copies of Licence obtained by the Department as well as contractors from the labours Department (LBS Mussoorie Site).

44. The tribunal vide its order dated 04.01.2017 ordered the management to produce those documents which is reproduced here under: -

February 1, 2017

Present: Shri. Satish Kumar Sharma, A/R for the claimant.

Shri. Atul Bhardwaj, A/R for the management.

Arguments on the application heard. It is clear from the averments made in the application that the claimant has desired the management to produce documents as mentioned in para 2 of the application. Documents in question are part of public record and are in possession of the management. All these documents are relevant so as to adjudicate the controversy in the present case. Resultantly, the application is allowed and management is directed to produce the same on 23.03.2017.

45. Despite the order of the tribunal and repeated time were sought by the management, the documents were not produced before the tribunal nor any explanation for non-production thereof was submitted by them. Though the documents were relevant and sufficient to throw light upon the nature of contractors' role in controlling and supervising the work of workman concerned and that of the management's authorities like JE & AE etc. in taking work from contract labours. The decision upon the lis before the tribunal required those documents which being relevant to the issue could certainly be helpful in reaching at its conclusion. Without any explanation since the documents were withheld and were not produced by the management, being custodia

legis thereof, the management is liable to be drawn adverse inference against them, in view of the law laid down by Hon'ble Supreme Court in **Gopal Krishna Ji Ketkar Vs. Mohamad Haji Latif and Another AIR 1968 SC 1413: (1968) 3 SCR 862: (1968) SC Online 5C63.** The relevant para 5 of the above judgment quoted below.

> *Para 5 On behalf of the appellant reference was made to the Area Book, Ex. 66 of the year 1890. The entry shows the name of Laxmibai widow of Govind Gopal Ketkar under the heading "bl eps ukao" (name of the person). Exhibit 67 is the entry from the Phalani Book for the year 1897 and shows the land as "Kilyacha Dongar" and under the column "bl eps ukao" is shown the name of Laxmibai widow of Govind Gopal. Exhibit 68 is of the same year from the revision Phalani containing similar entry with the map attached. In Exhibit 70 the name of Laxmibai is shown as "Khatedar" for the year 1906. In the remarks column there is an entry "one built well, one pakka built masjid, one Dargah, one tomb". Exhibit 71 is an entry for the year 1915 from Akar Phod Patrak and in the column of "Kabjedar" the name of Rukminibai Hari appears with regard to Plot 134. Thereafter, in the record of rights for the year 1913, Exhibit. 76, the name of the predecessor of the appellant is shown. On the basis of these entries it was submitted by Mr Gokhale that the ownership of the Plot was with the appellant and not with the Dargah. But there are important circumstances in this case which indicate that the appellant is not the owner of Survey Plot No. 134. Exhibits 64 and 65 are significant in this connection. Exhibit 64 is an entry from the "Sud" in Marathi for the year 1858 in connection with Survey Plot No. 134 (Revisional Survey Number). The original survey number of this Plot was 24 and it was known as "Kilyacha Dongar". The total area is shown to be 249 acres and 24 gunthas. It is shown as "Khalsa" land. Kharaba is shown as 89 acres 24 gunthas and the balance of the area is shown as 160 acres. In the last column the name of the cultivator is not mentioned but it is shown as "Khapachi". It is significant that the name of the Ketkar family is absent from this record. No convincing reason was furnished on behalf of the appellant to show why his name was not entered in the "Sud". It is also important to notice that the appellant has furnished no documentary evidence to show how his family acquired title to the land from the earliest time; there is no sanad or grant produced by the appellant to show that he had acquired title to the land. It further appears that the appellant's family did not assert any title to the land at the time of the survey made in 1858; otherwise there is no reason why its name was not entered in the "Sud" of the year 1858. It is true that there are a number of entries subsequent to the year 1890 and 1897 in which the Ketkar family is shown as the "Khatedar" or the occupant but these entries are not of much significance since the Ketkar family was in the fiduciary position of a manager of the Dargah and was lawfully in possession of Survey Plot No. 134 in that capacity. There is also another important circumstance that the appellant has no lands of his own near Plot No. 134 and the nearest lands he owns are in Bandhanwadi which are admittedly 3 ½ to 4 miles away from the top of the hill. There is also the important admission made by the appellant in the course of his evidence that there are 2 or 3 tombs behind the Musaferkhana. He stated further that "there is no cemetery or burial ground in Survey No. 134". But this evidence is in direct conflict with the statement of the appellant in the previous case that "Round about the Dargah many people die every year…. Anyone that died there, whether Hindu, Muslim or Parsee if he has no heirs is buried there". He also conceded that there is one public tank known as "Chasmyachi Vihir" near the Dargah and there are 5 wells near the Dargah and five boundaries "Aranas" about one mile from the Dargah. Lastly, reference should be made to the important circumstance that the appellant has not produced the account of the Dargah income. In the course of his evidence the appellant admitted that he was enjoying the income of Plot No. 134 but he did not produce any accounts to substantiate his contention. He also admitted that "he had got record of the Dargah income and that account was kept separately". But the appellant has not produced either his own accounts or the account of the Dargah to show as to how the income from Plot No. 134 was dealt with. Mr Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of Plot No. 134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.*

46. The withholding of material documents by non-production of documents summoned by the tribunal further reflects in non-production of contractor in evidence to prove the effective control and supervision of the contractor rather than that of the management such an omission result in inferring that control and supervision over the contract labour of the management. The reason for that inference is that contractor was reasonably treated to be a person required to maintain register of labours employed for work, muster role register, wage register, register of accident, register of fines. Register for deduction for damages or loss, register for advances, register of overtime work performed by the contract employees, if he is alleged principal employer. He is burdened with an obligation to issue identity card cum wage slip, employment for and service certificate

records referred above and were to be preserved by the contractors in ordinary course of their business. Labour officer was empowered to make investigation or inquiry with a view to ascertain and enforce due and proper observance of the regulations. Therefore, it emerges that regulation were made by the management itself in order to see that the contract employees get their dues under the law.

47. In the case of **Chintaman Rao, 1958 (II) LLJ 252** the Apex Court ruled that the concept of employment involves three ingredients:

(i) Employer

(ii) Employee

(iii) The contract of employment.

48. The employer is one who employs, that is one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of services between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In **Food Corporation of India 1985 (II) LLJ 4** the Apex Court held that a contract of employment discloses a relationship of command and obedience between them. Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not without something more become the workman of third person. The Apex Court further in the case of **Dharangadhara Chemical Works Ltd., 1957 (1) LLJ 477** 'Case of supervision and control' may be taken as the prima facie case for determining the relationship of employment it was further laid that existence of the right in master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work with the prima facie test for determining the existence of master and servant relationship.

49. **In the Case of Steel Authority of India Ltd. (SAIL) case, (2001) 7 SCC 1** the Apex Court ruled that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the Appropriate Government on abolition of contract labour system. Consequently, the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. The Apex Court in the steel Authority of India (Supra) has made it clear that where workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage in Husain Bhai Case and in Indian Petrochemicals Corporation Case, 1999 (6) SCC 439, if the answer is in affirmative the workman will be in fact an employee of the principal employer.

50. In the present matter the management failed to prove the deed of contract entered with its contractor to supply the contract labour. Even term of the contract is not made clear in the pleading and explained in the evidence also. The argument of the management that the contractor might have engaged the workman on the work assigned to him by the department does not seem to be true in the wake of evidences placed on record and non-production of documentary evidences of which management custodia legis, to produce before the tribunal.

51. The tribunal tends to record its finding on the basis of discussions made herein above that concerned workman was under the direct control and supervision of the principal employer namely the CPWD in the present industrial dispute. The contract under which contract labours were hired for the works and prohibited under the notification dated 31.07.2002 section 10 of the CLRA Act was sham and camouflage, had a nullity.

Effect of engagement of contract labour even after the notification prohibiting the contract labour for the work on 15 posts in the CPWD.

52. Undoubtedly the management was not just and rightful to engage contract labour on those 15 posts enumerated in the notification of prohibition issued under section 10 of the CLRA Act dated 31.07.2002. The present workman if continued working as contract labour even after the issuance of notification of prohibition under section 10 of the CLRA Act does not give him the right to be automatically absorbed in the CPWD establishment. In **SAIL case (Supra)** explained the position of workman engaged even after the issuance of notification of prohibition under section 10 of the CLRA Act in the case of **Kirloshkar Brothers Limited Vs. Ramcharan and Ors. (Civil Appeal No. 8446-8447 of 2022)** Justice M.R. Shah. Has summarised it relying on SAIL case Para 125. The Para 4.4 and 4.5 of the judgement in kirloshkar Brothers Limited (Supra) is being quoted here:

Para 4.4 After considering various decision of this court on the point, in paragraph 125. It was concluded as under: -

"125. *The upshot of the above discussion is outlined thus:*

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause

(a) of Section 2 of the Industrial Disputes Act; if

(i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or

(ii) any industry is carried on

(a) by or under the authority of the Central Government, or

(b) by a railway company; or

(c) by a specified controlled industry, then the Central Government will be the appropriate Government;

otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and (2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) In as much as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment.

Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6

hereunder. (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits there under.

53. Despite the order of the Delhi High Court and even after the recommendation of notification under section 10 of the CLRA Act 31.07.2002 for abolishing contract system for 15 posts including the post of helper contract labour was employed for the work of helper by the CPWD. Helper seems to be a comprehensive term which signifies those workmen who work in assistance to the skilled labour like Plumber, Mali, Mason etc., though the workman employed as helper may be unskilled. In the present case the workman states himself in pleading and evidence a 'helper' with plumber or mason wherever he was deployed. When the Appropriate Government notified and prohibited the employment of contract labour in the category of work of helper what would be the status of the contract labour such a question arose before the Apex Court SAIL case (Supra). The apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate government on abolition of contract labour system under sub section 1 of section 10 of the CLRA Act.

54. There is no explanation in pleadings of the management that how and why the management opted to terminate the services of workman who have stated in his statement of claim that in CWP No.4817/99 in the matter of All India CPWD (MRM) Karamchari Sangathan Vs, Union of India and Ors. Dated 26.05.2000 the Hon'ble High Court of Delhi directed the Ministry of Labour for constitution of a board to look into the aspect of contract system prevalent in the CPWD under the section 10 of the Contract labour in para 4 and 5 of the said order of Hon'ble Delhi High Court which is Ex.WW1/4 on record and quoted here under for easy reference

Para 4. If the decision is taken to abolish the contract labour in particular job/work process in any of the offices/establishments of CPWD (as per the terms of reference contained in Resolution dated 30th march, 2000), as per the judgement of the Supreme Court in All India Statuary Corporation (Supra) such Contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefits in terms of aforesaid judgment. In case the decision of the "appropriate government" is not to abolish contract labour system in any of the works/jobs process in any offices/establishments of CPWD the effect of that would be that contract labour system is permissible and, in that eventuality, CPWD shall have the right to deal with these contract workers in any manner it deems fit.

Para 5. Such contract labours who are still working shall be paid their wages regularly as per the provision of section 21 of the Act and in those cases where the contractors fail to make payment of wages, it shall be the responsibility of the CPWD as principal employer to make the payment of wages.

55. The claimant rendered continuous service of more than ten years to the management on the date when his services were illegally retrenched he had to be given retrenchment compensation in accordance with section 25F of the Industrial Dispute Act if the retrenchment is made abruptly. Claimant sustained loss of means of livelihood without any just and proper cause the salient fact which the tribunal considered is that the workman who has been retrenched is a workman under section 2 (s) in an industry defined under section 2 (j) who has been in continuous service for more than one year could be retrenched provided the employer complies with the twin conditions provided under clauses (a) & (b) section 25F of the Act 1947 before the retrenchment is given effect to Section 25F of the act 1947 is reproduced here under for easy reference:

*Section 25F. **Conditions precedent to retrenchment of workman**- No workman employed in any industry*

who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) The workman has been given on month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months, and

(c) Notice in the prescribed manner is served on the Appropriate Government [or such authority as may be specified by the appropriate government by notification in the official Gazette.]

Termination of service if illegal - consequence of illegal termination

56. It is proved in evidence by claimant/workman that his services were orally terminated by 'Mr. Gopal Singh Bhakuni' an assistant director of CPWD on 01.01.2014 the name of assistant director Sh. Gopal Singh Bhakuni comes into cross-examination of the workman/claimant by the management on 18.12.2017 recorded before the tribunal. The management has not rebutted the said fact of 'oral termination' by aforesaid assistant director of the CPWD through it's own witness. It remained on it's stand that claimant was employee of contractor therefore, it had no concern with his termination, but this argument has no legs to stand as against the evidence on record brought before the tribunal. This is also proved that claimant was in continuous employment as contract labour on 31.12.2013. Though he acquired legal right to be regularized in services of the CPWD, keeping him as daily wager contractual workman in the establishment was not just and legal under the provisions and prohibition contained in Industrial Dispute Act. Question to be decided by this tribunal is that whether the services of the claimant terminated by the management wrongfully and illegally? As such, to what relief the claimant is entitled will be a prime question for grant of relief. It is also proved that the workman was working as helper since the initial date of joining, discharged duties as such workman associated with and in assistance to plumber, electrician, mason, etc. as and when and wherever he was deployed. There is no evidence to contradict and repudiate the claim of workman that he has completed more than 240 days in every year of his employment. The termination of service in other word is called retrenchment under the Industrial Dispute Act Section 2 (oo) defines the retrenchment as under:

Section 2(oo) *"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-*

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains s stipulation in that behalf; or

(bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill-health.

57. In *K.V. Anil Mithra & Another V. Sree Sankaracharya University of Sanskrit & Another (2021 SCC online SC 982)* the Apex Court in Para 22, held as under: -

22:- *The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947.*

58. In the case of K.V Anil Mithra (Supra) the Apex Court further held-

23:- *The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad*

and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.

24:- *The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947.*

25:- *This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.*

If termination of service by the employer to save skin from their unlawful acts, opposed to status and public policy: -

59. Though this tribunal is not kept into a state of things by the management to know and peruse the terms of the contract between the 'contractor' and 'management' due to which 'pleadings' and 'statement in evidence of the management' that, workman concerned had been an employee of the contractor only working under his control and supervision find no support from facts to the contrary proved by the workman remained a bald statement only. The admission of management to the effect that the concerned post remained vacant for approximately 10 years, regular employee was not recruited against that post in the division whereas the other division of the management has such regular appointment, the contract labour after the year 2002 prohibited on 15 posts including helper, plumber, etc., then also employing and continuing the workman as contractual labour establishes the intention of management malicious to continue with the services of workman concerned year to year. Established principal of law relating to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves. However, the law in some cases over rights the will of the individuals making ineffective some intention under the contract which are opposed to statuary policy the tribunal will not to extend its aid to a party who based his cause of action or ground of defense on an immoral or illegal act. The Industrial Dispute Act and the Standing Orders Act both prohibit to keep a workman in temporary services for time infinite if he has successfully worked for a considerable length of time provided under the Industrial Dispute Act 240 days in a year (preceding 12 months).

60. Section 2 (ra) of the Industrial Dispute Act defines 'Unfair Labour Practice' means any of the practices specified in the 5th schedule of the Act. In 5th schedule there is item no. 10 which declares unlawful the practice to employ workman as "*badlis",* casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen. Moreover, item no. 5 in the same schedule makes the practice unlawful to discharge or dismiss workmen not in good faith, but in the colourable exercise of the employer's rights. In the present case the management has repeated pleading and statement in evidence also that the workman was contractual labour and his services were terminated by the contractor to whom management had no right to compel to keep particular workman to supply but this statement and pleading of the management is not proved whereas, the workman has successfully pleaded and proved in evidence also that he was used to be employed continuously irrespective of the change of contractors. Therefore, action of the management if it be impeachable on the ground of dishonesty, or as being opposed to public policy, if it be forbidden by law the tribunal would not be just to allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract for transaction which is illegal.

61. The management has not stated in its pleading or submitted any policy framed after the notification of prohibition u/s 10 of the CLRA Act. For the purposes of regularizing the services of such employees either *"badlis"* casual temporary or contract labours. Management failed to explain situations under which despite of issuance of notice of prohibition of contract labour under Section 10 of the CLRA Act, the contract labour was kept continued. They failed to rebut workman's pleading and evidence as to the continuous utilization of his services in the premises of management CPWD for the considerable long period of more than 10 years. The only provision in law upon which workman has based his claim for regularization is under Section 25 B of the

Act, which defines the 'continuous service'. The aforesaid provision of the Act entitles the workman to claim regularization being a workman who worked under the direct supervision and control of the management CPWD for continuous period as specified in Sub Section 1 & Sub Section 2 of Section 25B. But, the management wrongfully stopped him to work thereafter. Therefore, in the present case of a workman who worked under the supervision of the management Section 25 B read with section 25 F shall be applicable. Non observance of both the provision shall be treated malafide.

62. The scheme of the ID Act 1947, thus contemplates that the workman though employed as a daily wager or in any other capacity, if has worked for more than 240 days in the preceding 12 months for the alleged date of termination and if the employer wants to terminate the services of such workman he may do so after due compliance of the section 25F of the Act. In the present matter there is no pleading and evidence of such compliance of twin clause (a) & (b) of section 25F therefore, termination of the workman is held illegal and declared *void ab initio*.

63. In the facts and circumstances established and proved by evidences available on record the tribunal tends to declare that termination of services of the concerned workman Sh. Rajeev Saxena not only illegal and *void ab initio* but malafide also because same was done by the management in utter violation and non-observance of section 2 (ra) section 25 B read with section 25 F of the I.D Act, so as to defy their obligation accrued from the continuous service of the workman.

The consequence of non-observance of the provision of section 25 F. Whether reinstatement in service?

64. On the relief of reinstatement with or without back wages the tribunal has to consider, consequence of it's finding as to the termination of service illegal, malafide and *void ab initio*, whether the workman should be treated as continued in services of the management. The Apex Court in three judge bench decision in **Hindustan Tin Works Pvt. Ltd. V. Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors. (1979) 2 SCC 80,** where retrenchment of employees was declared illegal, held in para 9 -

> "*It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. SafaiKamdar Mandal [(1971) 1 LLJ 508*

(Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct"

65. In his cross-examination workman replying the quarry of the Learned Authorized Representatives of the management has unequivocally asserted that "I am unemployed now, I was terminated by 'Sh. Gopal Singh Bhakuni' (Assistant Director). I have two children, household expenses are borne by my mother. She is pensioner". This part of the cross examination is carved out from the cross-examination done by the management on 18.12.2017. Exhibit WW1/2 proved by the workman in his evidence on affidavit filed as examination in chief before the tribunal. The said letter reveals that after his employment with the management CPWD in the premises of Lal Bahadur Shastri IAS Academy as contract labour right from 1.4.1996 discharged his uninterrupted and continuous services till 31.12.2013 but on 01.01.2014 he was abruptly stopped from working there. ExhibitWW1/2 aforesaid is an application addressed to the Executive Engineer Dehradun Central Circle-1 by workman praying to reinstate him in services w.e.f. the date of termination of services. The date on which Exhibit WW1/2 is received in the office of the Executive Engineer in 20.05.2015. Exhibit WW1/1 shows the notice of the Industrial Dispute issued by secretary of this Central Government Industrial Tribunal No.1 New Delhi issued by the Executive Engineer Dehradun Central Division and the Executive Engineer Mussorrie Central Division with regard to present industrial dispute under section 2A filed by Sh. Rajeev Saxena claimant/workman concerned on 19.10.2015.Though there is no provision in the Industrial Dispute Act and Central Rules made there under prescribing limitation for the claim of reinstatement of services setting aside termination of service of the workman but the tribunal has to consider the effect of delayed raising of dispute, over the claim of reinstatement and regularization. <u>There is no explanation justifying in such passes of time the workman in his evidence has not stated anything why he had not raised his claim regularization at any point of time after the notification u/s 31/7/2002 of u/s 10 and prior to his illegal termination from service.</u>

66. In **Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya & Ors. (2013) 10 SCC 324** Hon'ble Apex Court highlighted the need to adopt a restitutionary approach, the court has to consider whether to reinstate an employee and if so, the extent to which back wages is to be ordered. Para 22 judgment in the aforesaid case is being reproduced here under-

Para 22. The very idea of restoring an employee to the position which he held dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

67. When termination of daily wager workman is done by the management and the termination is found illegal because of procedural defect, namely, in violation of Section 25 F of the Industrial Tribunal Act, Hon'ble Apex Court has consistently taken the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation. The aforesaid view expressed in Para 33 & 34 by the Apex Court in the case of **Bharat Sanchar Nigam Ltd. V. Bhurmal, (2014) 7 SCC 177**

Para 33 It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary

compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Para 34 the reason for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

68. The contract labour whose services were terminated without observance of section 25F of the Act may be monetarily compensated rather to reinstate in services. The reason to deny the relief of reinstatement in such cases are obvious. It is well established that the opposite party management cannot be absolved of the primary responsibility in its litigated proclivity the workman has waited for approximately 9 years in getting his claim adjudicated the denial of back wages may result in punching him although the delay may be attributable to the judicial process. The litigation cost may also be given in the circumstances of the case where management made all possible twists and hassles in expeditious disposal of the claim like non-production of documents which were best evidence and in possession of the management itself.

69. In the above context, it also has been noticed from facts and evidences on record that that workman has not cited any instance where termination of his service as daily wager turned illegal because the same was resorted to in violation of principle of last come first go viz, while retrenching him daily wager junior to him were retained. It is also not pleaded and proved that person junior to him were regularized under some policy but he was terminated. It is noticed that claim of regularization is not pleaded and proved by the concerned workman raised at any point of time at any forum of law during his continuation in service.

70. Applying the above principles as laid down by the Apex Court it is kept in mind that the claimant was working as a daily wager. Moreover, the termination took place more than 10 years ago. However, the fact remains that no direct evidence for working 10 years has been furnished and most of his documents which he could place by his efforts relatable to few years only. For all these reasons the tribunal is of the view that ends of justice would be met by granting compensation in monetary terms in lieu of "reinstatement".

71. (a) The tribunal declares termination (retrenchment) of claimant Sh. Rajeev Saxena, daily wager from his services by the management on 01.01.2014 illegal for non-observance of section 25F of the ID Act, 1947 malafide and *void ab initio.*

(b) The tribunal further declares the claimant entitled to be paid compensation by the management in terms of money in lieu of his reinstatement in services of the management to the tune of Rs.10,00,000/- (Ten Lakhs only). The management of CPWD (Opposite parties no. 1 & 2) are jointly and severally directed to pay pf the amount of compensation ordered above within 30 days from the date of order, failing which interest @ 6% per annum shall be leviable till the date of actual payment to the claimant/workman.

(c) A litigation cost of Rs. 2 Lakhs (Two lakhs only) shall be payable to the claimant/workman by the opposite parties 1 & 2 jointly and severally within 30 days from the date of award in failure to pay off same shall be leviable with interest @ 6% per annum till the date of actual payment.

(d) The opposite parties 1 & 2 are further held responsible for paying penal cost amounting to Rs. 2 Lakhs (Two lakhs only) on account of the claimant's suffering mental harassment and trauma by reason of abrupt loss of livelihood through illegal retrenchment. The above cost shall also be payable along with the amount of compensation and litigation cost as ordered above within aforesaid period of 30 days, in failure to pay within prescribed time interest shall be leviable at the rate of 6 % per annum till the date of actual payment.

(e) Office is directed to send the award in the manner as prescribed under section 17 of the I.D Act, 1947 to the appropriate government for implementation and enforcement of the Award.

Justice VIKAS KUNVAR SRIVASTAVA, (Retd.) Presiding Officer

30.05.2024

नई दिल्ली, 13 फरवरी, 2025

का.आ. 207.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार

कंटेनर कॉर्पोरेशन ऑफ इंडिया लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं I दिल्ली के पंचाट (168/2023) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आई आर (बी-I)-02]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 168/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* I *Delhi* as shown in the Annexure, in the industrial dispute between the management of The Container Corporation of India Ltd and their workmen.

[No. L-12025/01/2025– IR(B-1) -02]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No. 168/2023

Sh. Jitender Kumar,
Through Indian National Migrant Worker's Union,
1770/8, 3rd Floor, Govind Puri Extn.,
Main Road Kalkaji, New Delhi-110019.

Workman…

Versus

1. The Container Corporation of India Ltd.,
   Inland container Depot, Tughlakabad,
   New Delhi-110020.
2. M/s Asian Cargo Movers,
   21 Floor, DDA Market, M-Block,
   Yojna Vihar, Delhi-110092.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. ND-25/II-21/2023-IR dated 31.07.2023 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"*Whether the action of the management of M/s Asian Cargo Movers in terminating the services of Sh. Jitender Kumar S/o Raj Kishore Thakur, Ex Import Incharge w.e.f. 01.06.2020 is legal, just and proper? If not, what relief the workman is entitled to?"*

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the

management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA, Retired Judge, Allahabad High Court Presiding Officer

Date: 07.11.2024

नई दिल्ली, 13 फरवरी, 2025

का.आ. 208.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर मध्य रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (21/2009) प्रकाशित करती है।

[सं. एल - 41011/78/2008- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.21/2009*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Central Railway and others.

[No. L-41011/78/2008- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.21 of 2009

Reference No.L-41011/78/2008-IR(B-I) dated 25.6.2009

Divisional Secretary, Bridge Division,

Rail Mazdoor Union, Lucknow -----Applicant/ Workman

Versus

Chief Bridge Engineer, North Central Railway, HQ Office of NC Railway,

Subedarganj, Allahabad

-------Opp.Party/Respondent

Judgment

By means of order/reference no.L-41011/78/2008-IR (B-I) dated 25.6.2009, the Central Government considered it desirable to refer the dispute for adjudication to the following effect:-

> "*Whether the demand of the Rail Mazdoor Union over the matter of correct pay and designation of material checker grade Rs.225-308 along with all consequential benefits to be given to Sri D.N. Jha and Murlidhar the then Storemen and now Material Checker w.e.f. 5.10.1982 till 25.3.2008 is just, fair and legal? If yes, what relief the workmen are entitled to?"*

Case of the Workman:

The statement of claim was filed on behalf of workman/applicant before this Tribunal stating that the applicants Sri D.N. Jha and Sri Murlidhar who were initially appointed as Khalasi in Bride Department of Northern Railway, had been promoted as Storeman in Grade Rs.210-270/800-1150 for dealing with store matters in Bridge Department. It was also submitted on behalf of workmen that the standard designation of staff dealing with store matters in Department other than Stores is Material Checker in Grade Rs.225-308(RS)/825-1200 (RPS) and as such the action of

Bridge Department of Northern Railway in according the designation of Storeman and the scale of Rs.210-270(RS)/Rs.800-1150 (RPS) is absolutely in contravention of Railway Board's policy/instructions/Rules. It has been averred on behalf of workmen that the Railway Board's order dated 27.9.1963 clearly speaks in Para-1(i) that in the departments other than Stores, for staff dealing with stores matter only two designations shall be used namely Material Checkers and Material Clerks. On behalf of workmen it has also been mentioned that the workmen performed all the duties connected with dealing Store matters in Field Units of Bridge Department of Northern Railway now North Central Railway with headquarter at Allahabad and Kanpur independently but even then the Railway Management/respondent did not consider the representation of the workmen and Union and had not given the correct pay and designation for the period mentioned therein.

On the strength of above said facts, the applicant prayed that the workmen Sri D.N. Jha and Sri Murlidhar are entitled for correct pay and designation of Material Checker Grade Rs.225-308(RS)/825-1200(RPS) and difference of pay along with interest for the period 5.10.1982 to 25.3.2008.

Case of the Respondents:

The respondent filed written statement to the statement of claim filed on behalf of workmen stating that Sri D.N. Jha and Sri Murlidhar preferred an Original Application No.648 of 1999 before the Central Administrative Tribunal, Principal Bench, New Delhi along with other similarly situated workers for the purposes of promotion from the post of Storeman to M.C.C. and the Principal Bench passed an order dated 3.4.2003 with certain direction to the Railway Administration for the purposes of regularization & re-designation. It has further been stated on behalf of respondent that Railway Administration on the basis of judgment passed by the Tribunal implemented the decision of regularization of 28 workers and accordingly promoted them. Thus no industrial dispute exists and the reference is bad in law because the matter in dispute is barred by the principles of res-judicata.

On behalf of respondent it was submitted that for the purposes of promotion in clerical posts in Engineering Bridge Department, the written test shall be qualified by worker concerned and then the promotion will be allowed on the basis of 33¹/3 and 16¾ formula prescribed percentage for departmental promotion quota. Although the notification dated 3.10.2006 was issued but Sri Murlidhar did not submit his application and Sri D.N. Jha failed to appear in the selection Examination. Some of similarly situated workers qualified the examination and posted as Clerk.

It has also been submitted on behalf of respondent that the second notification was issued on 13.3.2008 in which both the workmen submitted their applications through proper channel and their names were mentioned at Serial no.32 and 33 of eligibility list. Workman Sri Murlihdar appeared in the written examination but did not qualify on one hand and on the other hand Sri D.N.Jha qualified the examination but he refused to join on the post through letter dated 6.4.2009. It has categorically been stated in the written statement filed on behalf of respondent that both the workmen promoted from time to time as per direction given by the Tribunal. Sri Murlidhar retired on 28.2.2009 from the post of Material Checker (M.C.) in amended scale of 5200-20200 GP-1800 and he had been paid all the dues which was received by him without any protest so that there is no dispute or difference of pay and consequential benefits.

It has also been mentioned in the written statement that Union is unrecognized and espousing the cause of workmen Sri D.N. Jha and Sri Murlidhar without their consent in this regard. One of the workers Sri Lalta Prasad Maurya given in writing to the department that he has no grievance against the Railway Administration.

On the basis of above said facts, the respondent prayed that the claim raised on behalf of the workmen being misconceive is liable to be rejected.

Thereafter documents as well as evidence between the parties were exchanged between the parties.

Finding & Conclusion:

In spite of notice none appeared on behalf of claimant/applicant whereas Sri U.K. Bajpai appeared on behalf of respondent. From the pleadings exchanged between the parties the undisputed fact of the present case which emerges out is that by means of reference dated 25.6.2009 Sri D.N. Jha and Sri Murlidhar the then Storemen raised a dispute that they should have been given the correct pay and designation of the posts of Material Checker Grade-2 w.e.f. 5.10.1982 till 25.3.2008. Further Sri U.K. Bajpai Learned Counsel for the respondent submitted that Sri Murlidhar retired on 28.2.2009 prior to the date of reference and Sri D.N. Jha retired on 31.8.2004. Thus in view of said facts the point which is to be considered is that whether the relief claimed on behalf of workmen namely Sri Murlidhar and Sri D.N. Jha can be granted to them or they are not entitled for the same as they had not raised any grievances and the grievance raised by them is at belated stage i.e. nearly about 27 years or not? Answer to the said question find place in the judgment passed in the case of M.D./Chief Manager, Jaipur Agar, Rajasthan State Road Transport Corporation, Jaipur Versus General Secretary, Rajashtan Transport Workers Organization, Jaipur reported in 2024 (182) FLR 892 in which it had been held as under:-

> "*6. In the case at hand, the respondent-workman was appointed on the post of Driver vide order dated 17.12.1986. Accordingly, the benefit of first selection scale became due after nine years, sometime in 2004-2005. The same was not done and neither was the non-grant of the benefit at the time was [2024:RJ-JP:2574] (5 of 11) [CW-4687/2022] challenged by the respondent-workman. The benefit of first selection*

scale was only granted vide order dated 06.04.2004. This deferment was also not challenged immediately and was only challenged for the first time in 2013. The first issue that is to be decided by this Court is what effect, if any, would this delay have on the merits of the case.

7. To decide the first issue, recourse may be taken to Hon'ble Supreme Court judgment of Mohan Lal (supra), the relevant portion of which is reproduced as under:

> *"19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh [Rajasthan Development Corpn. v. Gitam Singh, (2013) 5 SCC 136] that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.*
>
> *20. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1-11-1984 to 17- 2-1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18-2-1986. The workman raised the industrial dispute in 1992 i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial [2024:RJ-JP:2574] (6 of 11) [CW-4687/2022] dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief."*

Further, the Hon'ble Supreme Court in Sadhu Singh (supra), held as under:

> *"6. We shall at the outset deal with the issue of limitation. The respondent was retired compulsorily from service on 4- 1-2003. Original Civil Suit No. 41 of 2010 was instituted in 2010. The trial Judge as well as the first appellate court were of the view that the suit was not barred by limitation since the representation of the respondent for the grant of the three selection grades was rejected on 18-1-2010. The first appellate court, while concurring with the trial Judge also noted that the "final request" made by the respondent- plaintiff on 18-1-2010 was rejected and hence the suit was within limitation.*
>
> *7. The respondent waited for seven long years after his retirement to pursue a claim for the grant of selection grade. This was clearly beyond the residuary period of limitation of three years provided in Article 137 of the Schedule to the Limitation Act, 1963. That apart, in the decision of this Court in State of Rajasthan v. Shankar Lal Parmar: (2011) 14 SCC 235, the Court has considered the ambit of the scheme for selection grade. This Court has held thus:*
>
> > *"6. Another important and relevant clause in the said order for our perusal is Clause 7, which is also reproduced hereinbelow:*
> >
> > *'7. Selection grades in terms of this order shall be granted only to those employees whose [2024:RJ-JP:2574] (7 of 11) [CW-4687/2022] record of service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of grant of the selection grade.'*
>
> *7. Clause 7 makes it clear that only those employees would be entitled for grant of selection grades, whose service record has been satisfactory and are otherwise eligible for promotion on the basis of seniority but have not been able to get the same as there might not be any channel of promotion or for want of sanctioned posts in the cadre."*

8. The Court held that in terms of Clause 7, only those employees whose service record has been satisfactory would be entitled to be granted selection grade. In this context, the Court held:

> *"17. Clause 7 further makes it clear that only those/such employees would be entitled to be granted selection grade whose service record has been satisfactory. This implicitly shows that the person who has an untainted, unblemished, clean and unpolluted record in service would be treated on a higher pedestal than those who have either tainted, blemished, unclean or polluted record. This obviously appears to be a reasonable classification and is under the ambit and touchstone of Article 14 of the Constitution. There is neither any ambiguity nor any doubt in the same."*

9. On the touchstone of the above principles, it is evident that the respondent had been subjected to several

disciplinary proceedings and as many as 19 charge-sheets were issued against him which resulted in penalties of a varying nature. The service record of the respondent cannot be regarded as untainted or clean.

10. Ms Nidhi, learned counsel for the respondent submitted that some of the penalties which were imposed on the respondent were without cumulative effect. The consequence of the withholding of increments without [2024:RJ-JP:2574] (8 of 11) [CW-4687/2022] cumulative effect is that after the period prescribed, the respondent would be entitled to restoration of the original pay scale or the original pay. However, this does not obviate the position that the imposition of the penalty itself indicates that the service record of the employee was not satisfactory. Another submission which has been urged is that the penalties were of a minor nature. Assuming that to be so, it is evident that for the grant of selection grade, the respondent did not fulfil the requirements of a clean record of service. The grant of the selection grade is not a matter of right and was subject to the terms and conditions which were stipulated. The respondent failed to fulfil these terms and conditions.

11. For the above reasons, we are of the view that both on the question of limitation as well as on merits, the respondent was not entitled to the relief which was sought. The suit instituted by the respondent seven years after he had demitted office was barred by limitation. That apart, the respondent failed to meet the basic requirements for the selection grade."(emphasis supplied).

Further, the Hon'ble Supreme Court, in Bichitrananda Behera (supra), after considering the erstwhile judgments of Union of India v. Tarsem Singh: (2008) 8 SCC 648, Union of India v. N. Murugesan: (2022) 2 SCC 25, and Chairman, State Bank of India v. M.J. James: (2022) 2 SCC 301, concluded that delay and laches are vital in service matters, and can be seen as acquiescence."

AWARD

For the foregoing reasons the workmen are not entitled for any relief as per the Reference No. L-41012/33/2017-IR(B-I) dated 25.4.2018 and the claim of the workmen is hereby dismissed on the ground of delay and latches.

Award as above.

Lucknow.

10th June, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 13 फरवरी, 2025

का.आ. 209.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर पूर्व रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (72/2012) प्रकाशित करती है

[सं. एल - 41012/05/2012- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 72/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Central Railway and others.

[No. L-41012/05/2012- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 72/2012

Ref. No. L-41012/05/2012-IR(B-I) dated 29.08.2012

BETWEEN

Ashok Kumar Sharma S/o Late Shri Satya Narayan Sharma R/o H. No. 281/286, Mavaiyya, P.O. Rajendra Nagar Dist. Lucknow

AND

1. Divisional Railway Manager (Personal), North Eastern Railway, DRM Office, Ashok Road, Hazratganj, Lucknow
2. Senior Divisional Electrical Engineer, North Eastern Railway, Ashok Marg, Lucknow.
3. Section Engineer (Electrical), North Eastern Railway, Office of Section Engineer, Mailanee Lakhimpur Kheri

AWARD

By order No. L-41012/05/2012-IR(B-I) dated 29.08.2012 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *'"Whether the action of the management of North Eastern Railway in imposing the penalty of removal from service upon Shri Ashok Kumar vide their order dated 27/12/1999 is legal and justified? To what relief the workman is entitled?"*

Accordingly, an industrial dispute No. 72/2012 has been registered on 11.09.2012.

On 05.10.2013 claimant filed claim statement.

Facts stated in the claim petition are in brief that claimant was initially appointed with the respondent; however his services have been terminated without any reason by oral order dated 27.12.1999 in voilation to the provisions of the Industrial Dispute Act 1947 (hereinafter referred to as the Act) his services were dispensed on 24.04.2020.

On behalf of the respondent statement of defense filed on 29.07.2017, denying facts stated by the workman in his statement of claim.

After filing of the written statement by respondent, in spite of opportunities given to workman, he neither filed rejoinder nor evidence in support of his case on affidavit.

None of the parties were present on the date of hearing; accordingly case was reserved for orders.

In view of the above said facts the claimant/workman has not field any rejoinder/evidence in support of his case on affidavit, in spite of several opportunities given to him and taking into consideration the law as laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (1) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

18th November, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 13 फरवरी, 2025

का.आ. 210.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (65/2020) प्रकाशित करती है

[सं. एल - 41012/401/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 65/2000*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and others.

[No. L-41012/401/2000- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 65/2000

Ref. No. L-41012/401/2000/IR(B-I) dated: 17.08.2000

BETWEEN

Sri Dilip Kumar S/o Sh. Purvi Deen

872, Lakari Mohal, Sadar Bazar, PO-Diskusha Cantt, Lucknow

AND

The Works Manager, Loco Work Shop

Uttar Railway, Charbagh, Lucknow.

AWARD

By order No. L-41012/401/2000/IR(B-I) dated: 17.08.2000 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"Whether the action of the management of Uttar Railways Lucknow was justified in terminating the services of Shri Dilip Kumar from 13-12-867 If not, what relief the workman is entitled to?"*

Accordingly, an industrial dispute No. 65/2000 has been registered on 05.09.2000.

Thereafter, statement of claim was filed and this Tribunal on 29.09.2000 passed an order dated 14.05.2001.

Aggrieved by the said order the workman has filed a Writ Petition before the Hon'ble High Court No 2541 (SS) of 2001 wherein an order dated 23.05.2001 has been passed, quoted hereunder:

> *"Learned counsel for the petitioner submits that Section 11-A of the Industrial Disputes Act, 1947 to the case is applicable to this case and proviso to Section 11-A provides that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. By the impugned order (Annexure-1 to the writ Petition), the Labour Court has summoned certain documents from Janta Inter College, Bharawan, Hardoi which were not on the record. As per provisions of the Act, the Tribunal has to decide the matter only on the material on record.*
>
> *Learned Standing Counsel 1 for the Railways submits that in the instant case, provisions of Section) 11 of Industrial Disputes Act are applicable and under the provisions of that section documents can be summoned to substantiate the evidence already on record and Section 11-A is not applicable to the first part of the reference made to the Labour Court. The question requires detailed examination.*
>
> *Opposite party no.2 may file counter-affidavit within four weeks.*
>
> *List in the week commencing 16th July, 2001. Till next date of listing, proceedings in I.D.No. 65 of 2000 shall I remain stayed."*

Lastly, on 14.12.2016 an order was passed, which reads as under:

> *"List has been revised.*
>
> *No one appears on behalf of the petitioner to press this petition.*
>
> *This writ petition was filed challenging the order dated 14.05.2001 passed in I.D. Case No. 65 of 2000. By means of which the labour court had summoned certain documents from Janta Inter College, Bharawan, Hardoi, which were not on record.*
>
> *This writ petition was filed in the year 2001. More than 15 years have passed. It appears that the petitioner has lost interest in the matter and that is the reason why no one has put in appearance on behalf of the petitioner to press this petition.*
>
> *By efflux of time the petition has become infructuous.*
>
> *Dismissed accordingly."*

In view of said facts the matter was considered and in spite of notice, sent to the workman he did not turn up; accordingly, keeping in view the facts and circumstances of the case that claimant has not field any evidence on affidavit in support of his case, so, keeping in view said facts as well as the law as laid by the Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (1) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government canot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519****;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Lucknow.

15th July, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 13 फरवरी, 2025

का.आ. 211.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (06/2013) प्रकाशित करती है

[सं. एल - 12025/01/2025- आई आर (बी-I)-03]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 06/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and others.

[No. L-12025/01/2025- IR(B-I)-03]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 06/2013

BETWEEN

(1) रामायन प्रसाद गुप्ता पुत्र श्री, सोहनलाल गुप्ता

(2) शशिकान्त द्विवेदी पुत्र श्री. केशव प्रसाद द्विवेदी

(3) कमलेश्वर साही पुत्र श्री. राज किशोर साही

(4) सुशील कुमार पुत्र श्री, संकटा प्रसाद

(5) तीरथ लाल पुत्र श्री, बैजनाथ

द्वारा:- परवेज आलम, मॅडल सँगठन मन्त्री, उ० २०, कर्मचारी यूनियन 283/63 ख, गढ़ी कनौरा, (प्रेमवती नगर) पो०-मानक नगर, लखनऊँ-11- -कर्मकार।

AND

(1) मॅडल रेल प्रबन्धक (कार्मिक) महोदय,

उत्तर-रेलवे, डी०आर०एम० कार्यालय, लखनऊँ।

(2) वरिष्ठ मंडल सिग्नल एवं टेलीकाम अभियन्ता महोदय, उत्तर-रेलवे, डी०आर०एम० कार्यालय, लखनऊँ

AWARD

On 12.12.2012 the claimants/workmen have filed the present industrial dispute as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

The claimant in para 4 of their statement of claim have submitted as under:

"(4) यह कि उपरोक्त आदेश के अनुपालन में सेवायोजक महोदय ने कर्मकारों से कुछ स्पष्टीकरण माँगा जिसके विषय में कर्मकारों ने मान्नीय सेवायोजक महोदय से आवश्यक अभिलेखों की माँग की परन्तु सेवायोजक महोदय ने

उक्त अभिलेखों की प्रतिलिपियाँ कर्मकारों को आजतक उपलब्द्ध नही करायी और न तो कोई विभागीय जाँच करायी न कर्मकारों को अपने बचाव हेतु उचित अवसर प्रदान किये तथा कर्मकारगंण को पुनः रेल सेवा से अवैध रुप से निष्कासित कर दिया। जिसका विवरण निम्नलिखित है:-

क्रम सं.	नाम	पिता का नाम	पुनः सेवा समाप्ति की तिथि
1.	रामायन प्रसाद गुप्ता	श्री सोहनलाल गुप्ता	04-10-2005
2.	शशिकान्त द्विवेदी	श्री केशव प्रसाद द्विवेदी	07-06-2005
3.	कमलेश्वर साही	श्री राज किशोर साही	07-06-2005
4.	सुशील कुमार	श्री संकटा प्रसाद	27-07-2004
5.	तीरथ लाल	श्री बैजनाथ	07-06-2005

Accordingly, the workman has prayed for following relief:

"अतः कर्मकारगंण विनमता पूर्वक निवेदन करते है कि कर्मकारगण को जिनका विवरण प्रस्तर-*1* मे प्रस्तुत किया गया है, को अवैध सेवा समाप्ति की तिथि जिसका विवरण प्रस्तर-*4* में दिया गया है, से वेतन आदि सभी हित लाभों सहित सेवा में बहाल *(Re-instet)* करने हेतु आदेश करने की कृपा करें। महान कृपा होगी। "

After filing of pleadings on behalf of parties, learned counsel for respondent has raised a preliminary objection that the present case, aggrieved by the alleged impugned action by which the services of the applicant was terminated/retrenched, he has approached this Tribunal by invoking the provisions of Section 2A of the Act read with section 2A (3) of the Act, so, in view of provisions as provided in section 2A (3) of the Act, as period of limitation is three years i.e. fixed period of limitation, thus, taking into consideration the provisions of section 2A(3) of the Act, present claim petition filed by the applicant on 12.12.2012 allegedly aggrieved by the order of termination/retrenchment in the year 2004/2005 is totally illegal and arbitrary and is barred by period of limitation as provided in the section 2A(3) of the Act.

In rebuttal, reliance has been placed on para 08 of the statement of claim, which reads as under:

"(8) यह कि कर्मकारगंण ने अपनी अवैध सेवा समाप्ति को निरस्त करने व वेतन आदि सभी हित लाभों सहित री-ईन्स्टेट करने हेतु मान्नीय क्षेत्रीय श्रमायुक्त *(*के०*)* महोदय, लखनऊँ के समक्ष अपना औ० वि० सं०- लखनऊँ-*8 (1-72)/12* प्रस्तुत किया था जिसमे मान्नीय क्षेत्रीय श्रमायुक्त *(*के०*)* महोदय ने दि० *16/08/12* को मान्नीय सी०जी०आई०टी०, लखनऊँ के समक्ष वाद सीधे प्रेषित करने का आदेश किया था जिसके परिणाम स्वरुप कर्मकारगण अपना यह वाद मान्नीय न्यायालय के समक्ष प्रस्तुत कर रहे हैं। आर्डर शीट दि० *16/08/12* संलग्न है।"

I have heard learned counsel for respondent and gone through the record.

Now the core question which is to be considered is that in view of the facts which are stated herein above, admittedly the services of the applicant was terminated in the year 2004/2005 and thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 12.12.2012 on the grounds as taken by him as quoted hereinabove, is maintainable or barred by the period of limitation as provided u/s 2A(3).

Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041*** has held as under:

"9. Section 2A of the I.D. Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. Section 2A of the ID Act reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer

connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

10. By Act 24 of 2010, Section 2A was renumbered as sub-Section(1) and by same Act i.e., Act 24 of 2010 sub-Section (2) and (3) came to be inserted after Section 2A(1) of the I.D. Act. The said amendment Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively.

11. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in subSection(1).

12. A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act.

13. Thus, question which would arise for consideration in the instant case is; Whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition or in other words, if an application for condonation of delay under Section 5 of the Limitation Act is filed, would it be maintainable and such delay can be condoned?

14. Prior to incorporation of Section 2A a workman had to necessarily depend upon the trade unions to espouse his cause for seeking reference under Section 10(1)(c) of the I.D. Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act.

15. Section 10(4A) of the I.D. Act introduced by Karnataka Amendment Act 5 of 1988 enables an individual workman to challenge a termination order by directly applying to the Labour Court within six months from the date of communication of such order of termination.

16. The period of limitation for filing a petition before the Labour Court is six months from the date of communication of such order. A Division Bench of this Court has held in KSRTC Vs KHALEEL AHMED AND ANR reported in ILR 2002 (3) Kar 3827 that the period of six months prescribed under Section 10(4A) cannot be extended. It has been held by the Division Bench as under:

"23. It seems quite clear to us that the State Legislature has incorporated sub-Section (4A) in Section 10 of the Act to provide a more expeditious remedy to the workman enabling him to redress his grievances without undergoing the ordeal of approaching any Labour Union and without approaching the State Government for referring his case to the Labour Court. Therefore, the remedy provided under sub-Section (4-A) is a remedy alternative to what is provided under sub-Section (1) of Section 10 of the Act. But the right created under the State Amendment is coupled

with a condition that individual workman has to prefer application before the Labour Court within the time frame of six months fixed by the legislature. It is a statutory condition precedent for exercise of the right and availment of remedy under sub-Section (4-A) of Section 10 of the Act. Therefore, it has to be held that if an application is filed beyond the period of 6 months as prescribed under the above sub-Section, then it will be incumbent on the part of the Labour Court not to entertain such an application since the condition does not only bars the special remedy but it also strikes at the jurisdiction of the Labour Court to entertain such an application. Such an interpretation is in consonance with the general rule of interpretation of statute. Such construction will not also in any way prejudice the right of a workman to get his dispute resolved by a reference under sub-Section 10(1) of the Act provided the dispute sought to be raised do not become stale because of his inaction as held by the Supreme Court in the cases of Balbir Singh Vs Punjab Roadways, Indian Iron and Steel Co. Ltd., Vs Prahlad Singh and Telecom District Manager Vs A.A. Angali".

(emphasis supplied)

17. In EXECUTIVE ENGINEER AND OTHERS VS LOKESH REDDY AND OTHERS reported in MANU/KA/0190/2003 : 2003 (3) LLJ 662 the point which came up for consideration was whether the period of limitation provided under Section 10(4A) of the Act is directory or mandatory and it came to be held that it was mandatory. It has been held as under:

"40. In view of the discussion made so far, we respectfully disagree with the view taken by the learned single judge in the present matters in holding the period of limitation provided under Section 10(4-A) of the Act as directory and not mandatory and affirm the view taken in the case of Khaleel Ahmed (supra), which has already clarified the said position of law holding the period of limitation in Section 10(4-A) as mandatory. So, the view taken by the Labour Court and affirmed by the learned single judge in the matters relating to period of limitation provided under Section 10(4-A) of the Act, being contrary to the Division Bench decision of this Court in the Case of Khaleel Ahmed (Supra) cannot be sustained and consequently, the impugned awards in allowing the applications filed after about six years (and not within six months) under Section 10(4-A) of the Act should have been set aside by the learned single judge. Since that was not done by the learned single judge in the impugned order, our interference is required".

18. As to whether the plea of limitation though not raised, is required to be considered by the Labour Court or not while adjudicating a claim petition filed under Section 10(4A), came up for consideration before the Division Bench in SMT. RUKMINIBAI AND OTHERS VS THE DIVISIONAL CONTROLLER, NEKRTC, BIDAR DIVISION, BY ITS CHIEF LAW OFFICER reported in ILR 2013 Kar 1024 and held that Section 3 of the Limitation Act 1963, is peremptory in nature and imposing a duty on the Court to dismiss the applications which are barred by limitation even if the plea of limitation is not raised. It has been held as under:

"9. Section 3 of the Limitation Act, 1963, is peremptory in nature. It imposes a duty on the Court to dismiss the applications, which are barred by limitation even if the plea of limitation is not raised. If the claim petition is barred by time, the Court or an adjudicating authority has no power or authority to entertain such an application and decide it on merits. As stated, even in the absence of such a plea by the respondent or opponent, the Court or the authority must dismiss such an application if it is satisfied that the same is barred by limitation."

19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is

plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made.

22. In the background of aforestated discussion, when the facts of hand are examined, it would clearly indicate that on the services of the employee -respondent being terminated by the Management by letter of termination dated 11.02.2009, a reference was sought under Section 10(1)(c) (d) of the I.D. Act by the respondent by submitting a representation to Assistant Labour Commissioner, Bangalore on 06.09.2012. The appropriate Government made a reference by order dated 03.06.2013 - Annexure-N and pursuant to the same, proceedings was commenced before the Labour Court, Bengaluru in Reference No. 16/2013. After appearance of the respondent - employee before the Labour Court and before filing of the claim petition, a memo came to be filed on 07.11.2013 (part of Annexure-M) seeking withdrawal of the reference and permission to file a fresh application under Section 2A(2) of the I.D. Act. The said memo was partially accepted by the Labour Court as could be seen from the order dated 07.11.2013 (part of Annexure-M) passed on the said memo. It reads as under:

"First Party present and filed memo stating that the present reference is not maintainable and he intent's to file fresh application under Section 2A(2) of the I.D. Act.

Heard the respondent counsel. Perused the memo filed by the first party -workman for the reasons mentioned in memo the reference is hereby dismissed and case is closed."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Reverting the facts of the present case, and taking into the consideration as provided in section 2A (2) read with section 2A(3) of the Act and the law laid down by the various Hon'ble High Courts as stated herein above, as in the present case the services of the employees/workmen have been terminated in the year 2004/2005; and he has filed the present case on 12.12.2012 on the basis of reasoning as given by him in his claim petition is not maintainable, being barred by the provisions as provided u/s 2A(3) of the Act i.e. filed after three years, so the present case is liable to be dismissed.

Accordingly, the same stands dismissed; and the workman is not entitled for any relief.

Award as above.

LUCKNOW.

21st August, 2024.

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 13 फरवरी, 2025

का.आ. 212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (02/2016) प्रकाशित करती है

[सं. एल - 12025/01/2025- आई आर (बी-I)-04]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.02/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*

Lucknow **as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and others.**

[No. L-12025/01/2025- IR(B-I)-04]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 02/2016

BETWEEN

जगना उर्फ भगवानदेई, पत्नी स्व० दया शंकर

द्वाराः- श्री परवेज आलम, 283/63 ख, गढ़ी कनौरा, (प्रेमवती नगर) पो०-मानक नगर, लखनऊँ 11

AND

(1) सहायक मॅडल यांत्रिक अभियन्ता (डीजल) महोदय, उ०रे०, डीजल-शेड, आलमबाग, लखनऊँ।

(2) मंडल यांत्रिक अभियन्ता (डीजल) महोदय, उ०रे०, डीजल-शेड, आलमबाग, लखनऊँ-

AWARD

Facts of the case:

Smt Jagna, w/o Late Daya Shankar/claimant filed claim petition before this Tribunal on 11.09.2013/18.09.2013 u/s 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), facts in brief and relief claimed by claimant are as under:-

Claimant, Jagna, w/o deceased Daya Shankar, who was working as Khalasi (T. No. 483) under respondent no. 2; however, subsequently while working on post, was dismissed from services by an order dated 28.02.2004 and the appeal dated 26.03.2004 against said dismissal order is still pending with the respondents. After the death of the husband of applicant on 17.08.2008, number of representations were moved before respondent but no heed was paid, so, she moved application before Conciliation Officer on 05.01.2013 and in spite of best efforts no settlement has taken place between the parties, in said factual background claimant has filed present claim petition before this Tribunal.

On behalf of respondent preliminary object in has been filed, quoted hereunder:

> *"1. That the present claim statement has been filed by the claimant, who does not have any locus standei to institute the present claim statement against the management for the relief, which ought to have been sought by the deceased employee and the relief for compassionate appointment of the claimant is legally not maintainable before this Hon'ble Tribunal, as the same are beyond jurisdiction of this Hon'ble Tribunal.*
>
> *2. That the present claim statement has been filed after lapse of a period of 10 years, as such, the same is barred by limitation has been inserted as section 2A(3) of the Industrial Dispute Act, reproduced below:*
>
> > *2-A(3)- the application referred to in Sub- section 2 shall be made to the labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-section (1).*
>
> *That this Hon'ble Tribunal does not have jurisdiction to condone the delay as mentioned above in view of the provisions contained in the Industrial Dispute Act, as also no cognizance may be taken on the claim statement of the claimant.*
>
> *Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to reject and dismiss the claim statement of the claimant with no relief."*

None turned up on behalf of claimant inspite of notice; so, after hearing learned counsel for respondent and going through the records, two questions are to be adjudicated:

(a) Whether the claim petition, filed by the claimant against the order dated 28.02.2004 by which services of her husband were dismissed is within the period of limitation as provided u/s 2A (3) of the Act?

(b) Whether the claim petition, filed by the wife of deceased u/s 2A of the Act is maintainable or not?

Consideration of point (a):

In order to decide the preliminary objection, taken by respondent, it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947.

In brief which, the same are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated herein above, that admittedly the services of applicant was terminated on 06.08.2010, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 12.07.2021 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also

necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the

alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

In view the above said facts as well as that the workman/Sri Rajesh Kumar Gaur cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 06.08.2010, filed the present case on 12.07.2021 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be rejected.

Consideration of point (b):

Keeping in view the provisions of section 2A of the Act which is reproduced hereunder:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]"

From the bare perusal of the said section the position which emerged out that an individual workman whose services were discharged, dismissed, retrenched or otherwise terminated by employer can raised as dispute aggrieved by same.

Further, as per definition of workman, as provided u/s 2 's' of Act, reads as under:

"2 (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) *(iv)who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

Thus, from the combined reading of above quoted two sections i.e. 2A and 2 's', the widow of deceased employee cannot be said to fall within the ambit and scope of definition of 'workman', accordingly, claim petition filed by Smt. Jagna w/o of deceased employee Daya Shankar, liable to be rejected.

ORDER

For the foregoing reasons, claim petition filed by application u/s 2A of the Act, is rejected on the ground that applicant does not fall within the decision of 'workman' as provided u/s 2 's' of the Act; also, the same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

LUCKNOW.

16th July, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 13 फरवरी, 2025

का.आ. 213.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर पूर्व रेलवे** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (19/2018) प्रकाशित करती है

[सं. एल - 41012/33/2017- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.19/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and others.

[No. L-41012/33/2017- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 19 of 2018

Reference No. L-41012/33/2017-IR (B-I) dated 25.04.2018

BETWEEN

Ravi Ranjan Sinha, Confidential steno/Engineering

D.R.M. Office, N.E. Railway, Ashok Marg, Lucknow (226001)

Versus

1. General Manager,
North Eastern (N.E.) Railway,
Gorakhpur - 273012

2. Divisional Railway Manager
North Eastern Railway, Central Railway Administration
Ashok Marg, Lucknow

JUDGMENT

Sri D.P. Awasthi, Learned Counsel for the workman & Sri S. M. Tripathi, Learned Counsel for the respondents.

By means of order/reference no. L-41012/33/2017-IR(B-I) dated 25.04.2018, the Central Government considered it desirable to refer the dispute for adjudication to the following effect:-

क्या प्रबन्धन पूर्वोत्तर रेलवे, लखनऊ एवं गोरखपुर द्वारा श्री रवि रंजन कुमार सिन्हा, गोपनीय आशुलिपिक को दिनांक

20.10.2004 के स्थान पर 12.9.2003 से में पदोन्नति न दिया जाना न्यायोचित एवं वैध है? यदि नहीं तो कामगार किस राहत को पाने का हकदार है?

Case of the Workman:

The statement of claim was filed on behalf of workman/applicant before this Tribunal stating that the applicant was appointed on 15.10.1999 as steno in the pay scale of Rs.4000-6000 and for promotion in the higher grade of Rs.5000-8000, an examination was conducted in which the applicant was declared successful and a panel of 07 candidates was formed in which the name of applicant was found place at Serial no.7. On 11.9.2003 at the time of formation of panel only 4 vacancies of confidential steno of higher grade were lying vacant and the same were to be filled from the successful candidates from the panel. Out of 07 candidates, 01 refused for promotion and 02 candidates opted for transfer in East Central Railway/Hajipur Zone and thus only 04 persons including the applicant were left available for promotion/absorption against the 04 vacant vacancies. In spite of availability of 04 vacancies, the management promoted and posted only 03 candidates but did not promote and post the applicant which amounts to victimization of applicant without having any fault on his part. Due to impugned action on the part of respondents, the applicant suffered irreparable pecuniary loss and also of seniority, however, he was promoted later on w.e.f. 20.10.2004 though he was entitled to be promoted in higher grade of Rs.5000-8000 w.e.f. 12.9.2003-the date from which other 03 candidates were promoted and posted. The applicant submitted several representations but to no avail, hence, he raised the present industrial dispute against the unfair Labour practice adopted by the management and also violated the provisions of Section 25-T of the I.D. Act 1947 which is punishable Under Section 25-U of the Act 1947. Accordingly the applicant-Rabi Ranjan Kumar Singh prayed that the above said action of the respondents be held as illegal and not justified and the applicant be held entitle to be promoted in the higher grade of Rs.5000-8000 w.e.f. 2.9.2003 with consequential benefits.

Case of the respondents:

The Learned Counsel for the respondents raised the preliminary objections that -

a) the grievance of the workman is that he should be promoted from Steno Grade Rs.4000-6000 to the next higher grade of Rs.5000-8000 w.e.f. 12.9.2003 and not from 20.10.2004. The applicant has raised the above said grievance of promoting him w.e.f. 12.9.2003 by way of order/reference no.L-41012/33/2017-IR(B-I) dated 25.4.2018 so the same is liable to be dismissed for the want of delay & latches. In support of his pleadings the Learned Counsel for the respondents placed reliance on the judgment given by the Hon'ble Apex Court vide judgment dated 12.3.2018 passed in the case of Union of India Versus Gulshan Kumar Sharma passed in Civil Appeal No.2763 of 2018;

b) the applicant is employed on the post of a Confidential Steno holding the post in a managerial and administrative capacity. Therefore, he does not come in the realm of 'workman' under Sectio 2(s) of the Industrial Dispute Act, 1947. His gross pay as per his pay slip for the month of July, 2018 is Rs.65,995/-.

On merits:

Sri Ravi Ranjan Sinha-applicant/workman on the basis of above said facts pleaded in the written statement as under:-

a) That out of 04 vacant posts of Confidential Steno in the pay scale of Rs.5000-8000 only 03 posts were filled in vide office order dated 12.9.2003 while one general candidate Sri Om Prakash could not pass the speed test. However, consequent upon his failure in passing speed test, Sri Rabi Ranjan Kumar Sinha the applicant was promoted as confidential steno (5000-8000) against one vacant post vide office order dated 20.10.2004.

b) One Sri Om Prakash was the senior most candidate for whom one post was kept vacant as he could not qualify the speed test. As such, the applicant was not illegible being junior within zone of consideration for promotion.

c) The applicant since being junior did not come within zone of eligibility for promotion as Confidential Steno. However, after the senior most candidate one Sri Om Prakash was found unsuccessful in the Speed Test, the applicant was promoted vide office order dated 20.10.2004 as stated above.

d) The applicant has since now been promoted on availability of the post after his senior person Sri Om Prakash was found ineligible having failed in the speed test. Hence, the allegations of victimization and suffering pecuniary loss etc. are completely vague, biased and liable to be rejected.

e) The applicant has come before this Tribunal with an ulterior motive to abuse the process of law by misstating and suppressing the material particulars since his promotion was deferred due to one general post was kept vacant as one senior most general candidate Sri Om Prakash could not pass the speed test. However, consequent upon his failure in passing the speed test, the applicant was promoted as confidential steno (5000-8000) against the vacant post vide office order dated 20.10.2004. No junior person to the applicant was promoted ever.

On the basis of above said averments, the Learned Counsel for the respondents submitted that the applicant is not

entitled for any relief.

Findings & Considerations on preliminary objections

(i) Whether the relief as claimed by the workman is liable to be dismissed on the ground of delay?

Answer to the preliminary objection raised by the respondent that the claim as raised by the claimant is liable to be dismissed as the same was raised at belated stage i.e. 17 years finds places in the judgment rendered by the Bombay High Court in the case of ***Haribhau Vs. State of Maharashtra and Ors. 2002 (92) FLR1011***; wherein it has been held as under:-

4. The learned counsel for appellant relied upon the judgment of Supreme court in Ajaib Singh Vs. Sirhind Co-op. Marketing cum-processing service society Ltd. and Anr. (1999) ILLJ1260SC which was also cited before the learned single Judge. In Ajaib Singh's case the Apex Court in paragraph 10 and 11 of the report held thus at pp. 1264 and 1265 of LLJ.

> *"10. It follows, therefore, that the provisions of Art. 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or Board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the ate he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent-management on the full bench judgment of the Punjab and Haryana High Court in Ram Chander Morya Vs. State of Haryana 1999 (1) SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Art. 137 of the Limitation Act were applicable in the proceedings under the Act. The court specifically held neither any limitation has been provided nor any guidelines to determine, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour Tribunal will be five years after which the government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay". We are of the opinion that the Punjab and Haryana reference made or an application under section 37-C of the Act to be adjudicated. It is not the function of the Court to prescribe the limitation where the Legislature in its wisdom had thought if fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the judges presiding the court cannot be stretched to authorize them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature. The judgment of the full Bench of the Punjab and Haryana High Court had completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of applicability of the period of limitation for the purposes of invoking the jurisdiction of the Courts/Boards and Tribunal under the Act.*
>
> *11. In the instant case the respondent-management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no Jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the Courts were bound to render an even handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and objects and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just between equals, "the Court was not justified to make them equals while returning the findings which it allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Art. 226/227 of the Constitution."*

5. The Apex Court in the aforesaid judgment has held that the Limitation Act does not apply to the

proceedings under the Industrial Dispute Act and the relief cannot be denied to the workman merely on the ground of delay. The Apex Court further observed that the plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypothetical defence. It has further been observed by the Apex court that no reference to the labour court can be generally questioned on the ground of delay alone."

Accordingly, preliminary objection taken by the respondent that claim petition as raised by the claimant is barred, as the same has been filed at belated stated i.e. 17 years has got no force rejected.

(ii) Whether the applicant falls within the definition of 'workman' as given under Section 2(s) of the Industrial Disputes Act 1947.

The question that falls for consideration is whether the claimants were workmen according to the definition of workman u/s 2(s) of the ID Act. The definition under this Section has undergone changes since its first enactment. The definition, as it stood originally when the ID Act came into force w.e.f. 1.4.1947, read as follows:-

"(s) "workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this Act in relation to an industrial dispute, but does not include any person employed in the naval, military, or air service of the Crown."

The definition was amended by Amending Act No. 36 of 1956 which came into force from 29th August, 1956 to read as follows:-

(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge, or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline)Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(i) *who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature*."

The change brought about by this Amendment was that the persons employed to do "supervisory" and "technical" work were also included in the definition for the first time by this Amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed Rs.500.

The definition of 'workman' was further amended by Amending Act No.46 of 1982 which was brought into force w.e.f. 21.8.1984 and the same reads as under:-

"(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge, or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957);

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

A bare perusal of the aforementioned provision clearly indicates that a person would come within the purview of the said definition if he : (i) is employed in any industry; and (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work.

Hon'ble the Apex Court in the case of ***All India Reserve Bank Employees Association Versus Reserve Bank of India reported in AIR 1966 SC 305*** held as under:-

17. *However, in view of the importance of the subject and the possibility of a recurrence of such question in other spheres, and the remarks of the National Tribunal as to jurisdiction of the Central Government and itself we have considered it necessary to go into some of the points mooted before us. Before we deal with them we shall read some of the pertinent definitions from the Industrial Disputes Act, 1947 :*

"2. In this Act, unless there is anything repugnant in the subject or context,--

(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the condition of labour, of any person;

(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work clone in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any confessional supply of woodgrains or other articles;

(iii) any traveling concession;

but does not include-

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, include,,% any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934, or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per menses or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

23. *The argument is extremely ingenious and the simile interesting but it misses the realities of the amendment of the Industrial Disputes Act in 1956. The definition of 'workman' as it originally stood before the amendment in 1956 was as follows :-*

"2.(s) 'workman' means any person employed (including in apprentice) in any industry to do any skilled (11) 91 L. ed. 104 or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute a workman discharged during that dispute, but does not include any person employed in naval, military or air service of the Government."

24. The amending Act of 1956 introduced among the categories of persons already mentioned persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in clause (iv) partly because the draftsman followed the language of clause(iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition and clause (iv) was expressly preserved by using the word 'such' twice in the opening part. The words, which bind the two parts, are not-"but does not include any person". They are --

"but does not include any such person showing clearly that what is being excluded is a person who answers the description " employed to do supervisory work" and he is to be excluded because being employed in a 'supervisory capacity' he draws wages exceeding Rs. 500 per month or exercises functions of a particular character. The scheme of our Act is much simpler then that of the American statutes. No doubt like the Taft-Hartley Act the amending Act of 1956 in our country was passed to equalize bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen employed on supervisory work. 'Workman' here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workman if he draws wages in excess of Rs. 500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person who does not answer the description "employed to do supervisory work" but one who does answer that description. He goes out of the category of "workmen" on proof of the circumstances excluding him from the category."

Further in the case of ***H.R. Adyanthaya & others Versus Sandoz India Ltd. reported in (1994) 5 SCC 373***, the Hon'ble Apex Court held as under:-

"10. It is thus obvious from the decision that the contention on behalf of the workman before the Industrial Tribunal as well as before this Court was that the employee was doing either manual or clerical work, and that not only he had no supervisory duties but he was doing his work under the direction of his superiors and, therefore, he was a workman within the meaning of the definition of workman as it stood then. The dispute in question had arisen prior to 6th January, 1956. The definition of 'workman' at the relevant time included only those persons who were employed to do any skilled or unskilled manual or clerical work. Hence the relevant contention on behalf of the workman which was negatived by this Court. An inference from this decision is also possible, viz., that if the employees' work was mainly manual or clerical, he would have, even as the definition stood then, been covered by it."

Hon'ble the Supreme Court in the case of ***C.G. Gupta Versus Glaxo Smith Klin Pharmaceutical Limited reported in (2007) 7 SCC 171*** held as under:-

"23. In the present case, we find that for determining the nature of amendment, the question is whether it affects the legal rights of individual workers in the context that if they fall within the definition then they would be entitled to claim several benefits conferred by the Act. The amendment should be also one which would touch upon their substantive rights. Unless there is a clear provision to the effect that it is retrospective or such retrospectivity can be implied by necessary implication or intendment, it must be held to be prospective. We find no such clear provision or anything to suggest by necessary implication or intendment either in the amending Act or in the amendment itself. The amendment cannot be said to be one which affects procedure. In so far as the amendment substantially changes the scope of the definition of the term "workman" it cannot be said to be merely declaratory or clarificatory. In this regard we find that entirely new category of persons who are doing "operational" work was introduced first time in the definition and the words "skilled" and "unskilled" were made independent categories unlinked to the word "manual". It can be seen that the Industrial Disputes (Amendment) Act, 1984 was enacted by Parliament on 31.8.1982. Page 2633 However, the amendment itself was not brought into force immediately and in Sub-section (1) of Section 1 of the Amending Act, it was provided that it would come into force on such day as the Central Government may be Notification in the official Gazette, appoint. Ultimately, by a Notification the said amendment was brought into force on 21.8.1984. Although this Court has held that the amendment would be prospective if it is deemed to have come with effect on a particular day, a provision in the amendment Act to the effect that amendment would become operative in the future, would have similar effect.

24. Therefore, by the application of the tests mentioned above, it is clear that the definition of workman as amended must, therefore, presumed to be prospective.

25. In this regard we would like to give one further reason as to why the definition of workman as prevailing on the date of dismissal should be taken into account. When the workman is dismissed, it is usually contended (as has been done in the present case) that the relevant conditions precedent for retrenchment under Section 25N having not been followed and that, therefore, the termination is illegal. Section 25Q of the Industrial Disputes Act, 1947 lays down that contravention of the provision of Section 25N shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 1000/- or with both. It is, therefore, clear that on the date of dismissal, the employer must act according to the then prevailing provision of law. It is only in respect of a workman who is then within the definition of Section 2(s) of the Act that the employer is required to follow the condition mentioned in Section 25N, failing which, he will commit an offence. If the employee so dismissed, later becomes a person who is a workman within an expanded definition brought about by a subsequent amendment held to be of retrospective nature, the employer will be rendered punishable for an offence under Section 25N and Q as this would amount to the employer being punishable for an offence, which he could not have envisaged on the date of dismissal. This would be violative of Article 20(1) of the Constitution.

26. In Burmah Shell's case (supra) it was held as follows:

> *In this connection, we may take notice of the argument advanced by Mr. Chari on behalf of the Association that, whenever a technical man is employed in an industry, it must be held that he is employed to do technical work irrespective of the manner in which and the occasions on which the technical knowledge of that person is actually brought into use. The general proposition put forward by him was that, if a technical employee even gives advice or guides other workmen, it must be held that he is doing technical work and not supervisory work. He elaborated this submission by urging that, if we hold the supervisory work done by a technician as not amounting to his being employed to do technical work, the result would be that only those persons would be held to be employed on technical work who actually do manual work themselves. According to him this would result in making the word "technical" redundans in the definition of 'workman' even though it Page 2634 was later introduced to amplify the scope of the definition. We are unable to accept these submissions. The argument that, if we hold that supervisory work done by a technical man is not employment to do technical work, it would result in only manual work being held to be technical work, is not at all conect. There is a clear distinction between technical work and manual work. Similarly there is a distinction between employments which 'are substantially for manual duties, and employments where the principal duties are supervisory or other type, though incidentally involving some manual work. Even though the law in India is different from that in England, the views expressed by Branson, J., in Appeal of Gardner : In re Maschek : In re Tyrrell [1938] 1 All E.R. 20 are helpful, because, there also, the nature of the work had to be examined to see whether it was manual work. As examples of duties different from manual labour, though incidentally involving manual work, he mentioned cases where a worker (a) is mainly occupied in clerical or accounting work, or (b) is mainly occupied in supervising the work of others, or (c) is mainly occupied in managing a business or a department, or (d) is mainly engaged in salesmanship, or (e) if the successful execution of his work depends mainly upon the display of taste or imagination or the exercise of some special mental or artistic faculty or the application of scientific knowledge as distinguished from manual dexterity. Another helpful illustration given by him of the contrast between the two types of cases was in the following words:*
>
> > *If one finds a man employed because he has the artistic faculties which will enable him to produce something wanted in the shape of a creation of his own, then obviously, although it involves a good deal of manual labour, he is employed in order that the employer may get the benefit of his creative faculty.*
>
> *The example (e), given above, very appropriately applies to the case of a person employed to do technical work. His work depends upon special mental training or scientific or technical knowledge. If the man is employed because he possesses such faculties and they enable him to produce something as a creation of his own, he will have to be held to be employed on technical work, even though, in carrying out that work, he may have to go through a lot of manual labour. If, on the other hand, he is merely employed in supervising the work of others, the fact that, for the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work."*

Hon'ble the Apex Court in the case of ***Chauharya Tripathi & others Versus L.I.C. of India & others reported in 2015 (7) SCC 263***, in Para-7 held as under:-

> "7. *Keeping in view the question posed at the beginning, we are obligated to make a survey of the authorities that have been pronounced by this Court specifically pertaining to the Development Officers working in LIC. A three-Judge Bench of this Court in S.K. Verma vs. Mahesh Chandra & Anr.3, adverted to the definition of 'workman' as originally defined under Section 2(s) of the Act and the substantial amendment that was brought in 1956 in respect of the definition of 'workman' and referred to the decision in Workmen vs. Indian Standards Institution4 and dwelled upon the hierarchy of officers working in LIC, the duties performed by such officers and 2 (2008) 11 SCC 319 3 (1983) 4 SCC 214 4 (1975) 2 SCC 847 eventually held thus :*
>
> > *"A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India. that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in anyway. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is*

expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of s.2(s) of the Industrial, Disputes Act."

(*See also :* ***Om Carrying Corporation Versus Tilock Narang & others reported in 2016(148) FLR 915 & T.Boby Francis Versus Lucy Varghese & others reported in 2016(149) FLR 866***)

Hon'ble Punjab & Haryana High Court in the case of ***Jagdish Prasad Sharma Versus Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurugram & another reported in 2023 (178) FLR 565*** held as under:-

"5. After hearing learned counsel and consideration his submissions, it transpires that in the ex parte evidence in support of his claim, the petitioner tendered affidavit Ex.PW1/A in evidence and a perusal of the same shows that it is no where mentioned by the petitioner that he by the nature of his duties and work is a workman. Further, it is categorically mentioned therein that he joined the respondent-Company as Superintendent Grade-II, who was later on confirmed as an Operation Manager and worked till 01.06.2020. The petitioner revealed his last drawn wages as Rs.40,500/- per month. A perusal of the impugned award shows that the Labour Court has carefully examined the evidence on record including his affidavit Ex.PW-1/A, while holding that he failed to lead any evidence that he is a workman and dismissed his claim. In the given facts this Court does not find any merit in the argument that petitioner would fall within the definition of workman defined in Section 2(s) Industrial Disputes Act, 1947. Further, the decision in S.K. Maini's case (supra) relied upon by learned counsel for the petitioner also does not lend any help to the petitioner's case, wherein, it was held that whether an employee is a workman or not is required to be determined with reference to the nature of duties and functions. The relevant observations read as under:-

"After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it."

6. The Hon'ble Supreme Court while rejecting the case of appellant on merits also analyzed the nature and work of the appellant therein and upheld the findings of the High Court that he being Manager/In-charge of the shop was not a workman under Section 2(s) Industrial Disputes Act, 1947."

Recently the Bombay High Court in the case of ***M/s. S.K. International & another Versus Ashok Tanaji Tambe & another reported in 2024 (180) FLR 994*** has held as under:-

"17. On the aspect of determination of status of workmen, within the meaning of Section 2(s) of the ID Act, 1947, the legal position is fairly crystalized. Such determination must be based on the appreciation of the nature of the duties performed by the employee. Nomenclature of the post, which the employee holds, is not of decisive significance. The description of the nature of the duties also does not furnish a surer foundation for determination. Use of grandstanding expressions and management jargon to describe otherwise ordinary and normal functions, is not uncommon. It is, therefore, necessary to correctly appreciate the nature of the core duties discharged by a person whose status is questioned.

18. Section 2(s) of the ID Act, 1947 defines the expression workman to mean any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In the case of H.R. Adyanthaya and ors. vs. Sandoz (India) Ltd., the Constitution Bench of the Supreme Court enunciated that to be qualified to be workman under Section 2(s), the person must be employed to do the work which falls in any of the specified categories, manual, unskilled, skilled, technical, operational, clerical or supervisory. To put it in other words, it is not enough that a person is not covered by any of the four exceptions to the definition. It is also fairly well settled that the burden is on the person, who asserts the status of the workman under Section 2(s) to establish with reference to the dominant nature of his duties that the work which the said person performs falls within one of the specified categories under Section 2(s) of the Act, 1947.

19. In the case of Burmah Shell Oil Storage and Distribution Company of India Ltd. V/s. The Burmah Shell Management Staff Association and Others the Supreme Court adverted to a situation where an employee is entrusted to discharge multifarious duties. In such cases, the Supreme Court held, it would be necessary to determine under which classification the employee will fall for the purpose of finding out whether he does not go out of the definition of "workman" under the exceptions. The principle is now well settled that for this purpose, a workman must be held to be employed to do that work which is the work he is required to do, even though he may be incidentally doing other types of work. The Supreme Court referred to its earlier decision in the case of Ananda Bazar Patrika (P) Ltd. Vs. Workmen, where the principle was enunciated as under:

> *"3. The question whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere act that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. ...."*
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> *(emphasis supplied)*

20. In the case of Arkal Govind Raj Rao vs. CIBA Geigy and India Ltd. another three-judge Bench of the Supreme Court re-exposited the principle in the following words:

> *"6. where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. ....."*

21. A useful reference in this context can also be made to a decision of the Supreme Court in the case of S.K.Maini V/s. M/s. Carona Sahu Company Ltd. and Anr.10 wherein it was enunciated that when an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in Burmah Shell Oil Storage (supra). In All India Reserve Bank Employees' Assn. V/s. Reserve Bank of India, it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act."

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> *"3. The question whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere act that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity....." (Emphasis supplied)*

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Hon'ble Supreme Court by means of judgment dated 2.4.2004 passed in the case of ***M/s. Bharat Airtel Limited Versus A.S. Raghavendra passed in Civil Appeal No.5187 of 2023 (2024 INSC 265)*** after taking into consider the definition of 'workman' as given u/s 2 's' of the I.D. Act, 1947; and various judgments on the point in issue, held as under:-

"23. The records also show that the respondent, in fact, performed a supervisory role over the managers and was the Assessing Manager of his team, which consisted of Managers in the B-1 & B-2 Levels. Moreover, after adducing the evidence led by both sides, the Labour Court vide a detailed order and discussion, has held the respondent not to be covered under "workman" as per Section 2(s), ID Act. The learned Single Judge has not appreciated the discussion by the Labour Court and the available evidence in their true perspective, relying mainly upon the judgment in Ved Prakash Gupta (supra). In Paragraph 12 of Ved Prakash Gupta (supra), it was held "...It must also be remembered that the evidence of both WW1 and MW1 shows that the appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the appellant was only that of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported."

24. A bare perusal of the above makes it crystal clear that absence of power to appoint, dismiss or conduct disciplinary enquiries against other employees was not the only reason for the Court to conclude in Ved Prakash Gupta (supra) that the appellant therein was a "workman". At this juncture, we may note that although Ved Prakash Gupta (supra) was decided by a 3-Judge Bench, in a later judgment by a 2-Judge Bench of this Court in S K Maini v M/s Carona Sahu Company Limited, (1994) 3 SCC 510, it was held that "...It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set-up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. ..." The judgment in S K Maini (supra) is innocent of Ved Prakash Gupta (supra), but we do not find any inconsistency in the statement of law laid down in S K Maini (supra), given our reading of Ved Prakash Gupta (supra) as enunciated hereinabove.

25. That being said, in our considered view, mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of "workman" under Section 2(s), ID Act. We cannot be oblivious of the impact of our decisions. In this context, reference to the decision in Shivashakti Sugars Limited v Shree Renuka Sugar Limited, (2017) 7 SCC 729 is apposite:

"43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/ physical sciences) come into play and the impact of other disciplines on Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as "globalisation" of economy. India is on 118 [2024] 4 S.C.R. Digital Supreme Court Reports the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as "Law and Economics". In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles. Monopoly laws (popularly known as "Antitrust Laws" in USA) have been transformed by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions. 44.We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular

provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court [2024] 4 S.C.R. 119 M/S Bharti Airtel Limited v. A.S. Raghavendra needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative."

Hon'ble the Bombay High Court in the case of ***Godrej and Boyce Manufacturing Company Ltd. Vs. Shivkranit Kamgar Sanghatana & others 2024 LLR 492*** held as under:

"4. The respondent is a union registered under the Trade Unions Act of 1926 representing workmen of the company established in Satara.

5. In 2015, the respondent raised a Charter of Demands seeking an increase in wages, benefits and emoluments for the workmen concerned. Since the conciliation proceedings failed, the dispute was referred to the Industrial Tribunal for adjudication. The union raised the dispute on behalf of about 44 employees whose names were stated in Annexure-A to the Statement of Claim.

6. The petitioner applied framing of a preliminary issue as, according to the petitioner, persons named in the Annexure to the statement of claim do not fall within the meaning of Section 2(s) of the I.D. Act. By an order dated 8th November 2017, the Industrial Tribunal framed a preliminary issue as to whether the employees mentioned in Annexure-A to the statement of claim are workmen.

7. The respondent examined Mr. Sachin Desai as its only witness by filing his affidavit in lieu of examination-in-chief whom the petitioner cross-examined. Petitioner examined eight witnesses in support of his plea that persons mentioned in the Annexure are not workmen. The respondent cross-examined the witnesses. The Industrial Tribunal Satara, by order dated 9th June 2021, held that 20 persons enlisted in the Annexure to the statement of claim are workmen within the meaning of Section 2(s) of the I.D. Act. The petitioner has, therefore, filed a present writ petition challenging the said order.

8. Mr. Cama learned senior advocate appearing for the company establishment, has urged the following submissions in support of the challenge to the order of the Industrial Tribunal:

i. The duties assigned to the workers were managerial, administrative, or supervisory. The dominant nature of their work was managerial or administrative.

ii. The Industrial Tribunal wrongly concluded that the respondent employees are technically qualified (ITI persons). Hence, they cannot be termed as persons performing supervisory or managerial functions.

iii. In the letters of appointment, letters of confirmation, and during the annual performance appraisal process, they were engaged to perform managerial and supervisory functions. Assuming respondent employees fall within the lowest rank system, they still were in the management cadre of the petitioner company by nature of their duties.

iv. The initial burden of proving that employees are workmen within the meaning of Section 2(s) of the I.D. Act is on the employees that they failed to discharge as only one person who later withdrew from the proceeding deposed on behalf of all the employees.

v. Various material documents produced on record by the petitioner relating to the recruitment process, duty list, performance appraisal, progressive reviews, management cadre emoluments, management remuneration package, performance paid, and economic value add, i.e., based on the profit-showing formula, were not properly considered by the Industrial Tribunal.

vi. The evidence laid by the petitioner in respect of the nature of duties carried out by respondent employees, which clearly established that duties performed by them do not fall within the inclusive portion of the definition of the word "workman", remained unchallenged as they were cross-examined on behalf of the respondent union. According to him, the order passed by the Industrial Tribunal does not conform with the Apex Court's judgment in the case of Burmah Shell Oil Storage and Distribution Company of India Limited Vs. Burmah Shell Management Staff Association and Ors. reported in AIR 1971 SCC 922, this court in case of The National Textile Corporation (Maharashtra North), Ltd., and Ors. Vs. S.M. Tambe and Anr. 2000 (3) L.L.N. 913 and C. Gupta Vs. GlaxoSmithKline Pharmaceutical Ltd. & Anr. 2004 Volume II CLR 23 and, therefore, the order deserves to be set aside, and the matter needs to be sent back to the Industrial Tribunal for fresh consideration of the question of whether the concerned employees were working within the meaning of Section 2(s) of the I.D. Act or not.

9. On the other hand, Mr. Nitin Kulkarni, learned counsel appearing of the union, would urge that:

i. The Industrial Tribunal applied the correct test and rightly held that the concerned employees were workmen under Section 2(s) of the I.D. Act.

ii. Witness Sachin Jadhav gave details of the nature of work performed by each employee. In the cross-examination, petitioners' witnesses admitted that K-Band, where the respondents were carrying out their work, is the lowest Band. Supervisors belonged to A-Band, Managers to P-Band, Engineers to O-Band, the Assistant General Manager to T-Band, and the General Manager to E-Band. The respondent workers belonged to K-Band and held ITI qualifications acquired after passing the 10th standard examination.

iii. From the available evidence, it is more than clear that employees were discharging the duties of workers as specified in the Statement of Claim and, therefore, findings recorded by the Industrial Tribunal do not require any interference in extraordinary jurisdiction under Article 226 and 227 of the Constitution of India.

10. Before August 29, 1956, the Industrial Disputes Act's definition of "workman" only included skilled and unskilled manual or clerical workers, excluding those in supervisory, technical roles. However, amendments in 1956 and 1982 expanded the definition to include these categories. The Supreme Court judgments in May and Baker (India) Ltd. v. Workmen AIR 1967 SC 678, Western India Match Co. Ltd. v. Workmen 1963:INSC:130 : AIR 1964 SC 472, and Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burma Shell Management Staff Assn. (1970) 3 SCC 378 interpreted the definition in earlier years, focusing on whether the work done by individuals fell within the categories of manual, clerical, supervisory, or technical. These judgments determined the eligibility of individuals as workmen based on the nature of their tasks. Subsequent judgments in S.K. Verma v. Mahesh Chandra (1983) 4 SCC 214] Ved Prakash Gupta v. Delton Cable India (P) Ltd. (1984) 2 SCC 569 and Arkal Govind Raj Rao v. Ciba Geigy of India Ltd. (1985) 3 SCC 371 failed to notice the earlier decisions and adopted a broader interpretation. They held that individuals not fitting the four specified categories could still be considered workmen- however, the judgment in A. Sundarambal v. Govt. of Goa, Daman and Diu (1988) 4 SCC 42 reaffirmed the importance of the earlier precedents, asserting that a person must fall within the defined categories to qualify as a workman. Ultimately, the legal position is crystallized in the case of H.R. Adyanthaya and Ors. Vs. Sandoz (India) Limited reported in 1994 5 SCC 737 wherein the five Judges' bench of Apex Court held that to be considered a workman under the ID Act, an individual must be employed in manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. It is held that to attract provisions of Section 2(s) of the I.D. Act, the employee must show that he performs any work enumerated in the definition and that he is excluded under the four exceptions as provided in the definition.

11. For the adjudication of the status of a workman, what is required to be seen is an emphasis on the actual work performed by such an employee. In other words, if the nature of duties actually performed predominantly shows that he discharges duties to do the work of any of the categories listed in Section 2(s). He is not covered by exceptions of Section 2(s); it would be decisive of the matter that the employee is a workman, and the designation or salary of the employee would be irrelevant.

12. It is now well settled that the adjudication of the issue as to person working within the meaning of Section 2(s) of the I.D. Act has to be determined with reference to the principle of nature of his duties and functions. The dominant purpose of employees must be taken into consideration, and the gloss of some additional duties must be rejected while determining the status and character of a person. The Tribunal needs to first address itself as to various duties assigned to the employees and then draw a conclusion of law as to whether in the light of duties assigned to him would be whether the employee would be working or not."

Accordingly, in not shell it can be said that from perusal of definition of 'workman' indicates that a person would come within the purview of Section 2(s) of the I.D. Act if he is employed in an industry and performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Further, the definition also indicates exceptions as to when a person would not be covered in the aforementioned definition. It inter alia states that a person would not be covered under the definition if (i) he is employed in a managerial or administrative capacity or (ii) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Reverting to the facts of present case, as per the pleadings/documents filed by the parties on record as well as the documentary and oral evidence led by them, from careful scrutiny of said material, the position which emerged out that the claimant/workman who was working on the post Steno with the respondent/NER is workman as per the definition given u/s 2 ‘s’ of the Industrial Disputes Act 1947.

In view of the said facts the preliminary objections taken by the Learned counsel for the respondents that the workman does not fall within the definition of 'workman' as defined under section 2(s) of the Act 1947 has got no force, hence, rejected.

Consideration on merit:

On the basis of arguments as raised by the parties the admitted position which emerges out that on 15.10.1999 workman was appointed on 15.10.1999 as steno in the pay scale of Rs.4000-6000. On 19.2.2001 a promotional exercise was conducted for higher grade of Rs.5000-8000. In the said grade the following persons were selected:-

1. Sri Om Prakash
2. Sri Arvind Kumar
3. Sri Yadunath
4. Sri Uttam Kumar
5. Sri Rajesh Misra
6. Sri Ajit Sarkar
7. Sri Rabi Ranjan Kumar Sinha

Further on 11.9.2003 at the time of formation of panel only 04 vacancies of Confidential Steno of higher grade of Rs.5000-8000 were lying vacant and the same were to be filled in by said panel of aforesaid selected candidates. Sri Om Prakash who was placed at Serial No.1 of the selection panel refused for promotion due to personal and ill health reason. Sri Yadunath Prasad placed & Sri Uttam Kumar at Serial nos.3 & 4 respectively opted for transfer in East Central Railway/Hajipur Zone of Indian Railway, hence, only 04 persons namely Sharvshri Arvind Kumar, Rajesh Mishra, Ajit Sarkar & Rabi Ranjan Kumar Sinha were left available for promotion/absorption against 04 vacant vacancies of Confidential Steno in the grade of Rs.5000-8000. Later on by means of an order dated 20.10.2004 the applicant was promoted in pursuance to the said exercise which reads as under:-

> श्री रवि रंजन कु0 सिन्हा, आशुलिपिक वेतनमान (4000–6000) अधीन सहायक सुरक्षा आयुक्त/रेसुब, लखनऊ की पदोन्नति गोपनीय आशुलिपिक वेतनमान (5000–8000) में करके पूर्व में जारी कार्यालय आदेश संख्या 294 ई/।।/281/का/मै/वा0लि0 दिनांक 13/28.3.2003 के अनुसार पदस्थापित किया जाता है। इनका वेतन निर्धारण पदोन्नति पर रु0 5000/– निर्धारित किया जाता है।
>
> यदि कर्मचारी नियम–1313 आर ।। के अर्न्तगत वेतन निर्धारित करना चाहे तो एक माह के अन्दर विकल्प दे सकते हैं। इसके उपरान्त प्राप्त विकल्प पर विचार नहीं किया जायेगा।
>
> यह वमकाधि/लखनऊ के आदेश से जारी किया जाता है।

and in pursuance to the above facts the applicant joined his duties on the aforesaid post. Further the applicant has filed an affidavit in support of his case (examination in chief) dated 2.12.2020 and along with said affidavit he filed Annexure-5 (representation made by him dated 7.10.2005), the heading of which is as under:-

> विषयः– गोपनीय आशुलिपिक वेतनमान 5000–8000 में पदोन्नति के सम्बन्ध में।
>
> सन्दर्भः–आपका कार्यालय आदेश संख्या 458, पृष्ठांकन सं.–ई/।।/210/।/चार/आशुलिपिक
>
> दिनांक 20.10.2004

and in Para-21 of the representation dated 7.10.2005 the applicant stated as under:-

> 21. यह कि इस पदोन्नति को दिये जाने के पूर्व श्री ओम प्रकाश हेतु एक गति परीक्षा का आयोजन दि0 21.9.2004 को लिया गया एवं आशुलेखन परीक्षा का परिणाम दिनांक 13.10.2004 को प्रकाशित किया गया। उपरोक्त परीक्षरी कराये जाने की कोई आवश्यकता नहीं थी। उपरोक्त पीक्षा में शामिल होने के लिये न तो श्री ओम प्रकाश का कोई वैधानिक दावा था और न ही कोई वैधानिक अधिकार। उपरोक्त परीक्ष मात्र इसलिए आयोजित की गई क्योंकि कार्मिक विभाग द्वारा लम्बे समय से पद को रिक्त रखा गया था एवं इसी बीच पदोन्नति संबधी कार्यवाही पूरी नहीं कर ली गयी थी। पद रिक्त रखने का एक मात्र उद्देश्य यह था कि श्री ओम प्रकाश को गति परीक्षा हेतु एक अतिरिक्त अवसर दिया जा सके।

Further on behalf of the respondents in support of their case, evidence on affidavit (examination in chief) of one Sri Daya Shanker, APO in the office of Divisional Railway Manager, N.E. Railway, Lucknow was filed and in paras-3 & 5 it was stated as under:-

> "3. The applicant has been promoted as Confidential Steno in the pay scale of Rs.5000-8000 at pay of Rs.5000/- vide office order dated 20.10.2004 issued by Divl.Railway Manager (p) NE Railway, Lucknow.
>
> 5. That the promotion of the applicant was deferred due to one general post was kept vacant as one senior most general candidate Sri Om Prakash could not pass the speed test. However, consequent upon his

failure in passing the speed test, the applicant was promoted as confidential steno (Rs.5000-8000) against the vacant post vide office order dated 20.10.2004. It may be pointed out that no junior person to the applicant was ever promoted."

and in the cross examination it has been stated as under:-

प्र0 – चार पद के लिए प्रोमोशनल एक्साइज की गयी थी और 12.9.2003 के तीन पद (5000–8000) पर भरे गये, चौथा पद इसलिए नहीं भरा गया क्योंकि ओमप्रकाश सबसे सीनियर के स्पीड टेस्ट के लिये रिफ्यूजल दे दिया जबकि रविरंजन टेस्ट में पास थे उनके द्वारा क्यो नहीं भरा गया।

उ0 – 12.9.2003 को ओम प्रकाश का रिफ्यूजल प्राप्त हुआ और उसी दिन प्रामोशन आर्डर जारी हुआ था अतः प्रार्थी को नहीं लिया।

प्र0– अगर आपसी बात सही मानी जाए कि 12.9.2003 को लिस्ट जारी की गयी और चौथी पोस्ट श्री ओम प्रकाश के रिफ्यूजल से जारी हुयी तो आपने उस पद को रवि रंजन से क्यो नहीं भरी।

उ0 – उनकी पदोन्नति 20.10.2004 को हुयी।

Further as per facts on record by means of an order dated 12.9.2003 in pursuance to the promotional exercise the following persons were promoted from Grade 4000-6000 to Grade 5000-8000:-

1. Sri Arvind Kumar
2. Sri Rajeev Mishra
3. Sri Ajit Sarkar

The order dated 12.9.2003 reads as under:-

कार्यालय आदेश संख्या : 1513

प्रबन्ध शाखा में निम्न पदोन्नति एवं पदस्थापना आदेश तत्काल प्रभाव से जारी किया जाता है। यदि किसी कर्मचारी को पदोन्नति पर वेतन निर्धारण हेतु विकल्प नियम 1313 भाग–।। के अर्न्तगत देना हो तो एक माह के अन्दर दे दें।

1. मण्डल रेल प्रबन्धक के अनुमोदन से गोपनीय आशुलिपिक वेतनमान 5000–8000 का एक अनुसूचित जनजाति का पद अनुसूचित जाति में बदलाव करते हुए श्री अरविन्द कुमार, अनुसूचित जाति, आशुलिपिक कार्यरत अधीन मण्डल परिचालन प्रबन्धक, लखनऊ की पदोन्नति गोपनीय आशुलिपिक वेतनमान 5000–8000 में उसके वर्तमान कार्यस्थल पर की जाती है। पदोन्नति पर इनका वेतनमान 5000–8000 में वेतन 5000 निर्धारित किया जाता है।
2. श्री राजेश मिश्र, आशुलिपिक वेतनमान 4000–6000 कार्यरत अधीन मण्डल रेल प्रबन्धक, लखनऊ की पदान्नति गोपनीय आशुलिपिक वेतनमान 5000–8000 में उसके वर्तमान कार्यस्थल पर की जाती है। पदोन्नति पर इनका वेतनमान 5000–8000 में वेतन 5000 निर्धारित किया जाता है।
3. श्री अजीत सरकार, आशुलिपिक वेतनमान 4000–6000 कार्यरत अधीन मण्डल वाणिज्य प्रबन्धक, लखनऊ की पदोन्नति गोपनीय आशुलिपिक वेतनमान 5000–8000 में उसके वर्तमान कार्यस्थल पर की जाती है। पदोन्नति पर इनका वेतनमान 5000–8000 में वेतन 5000 निर्धारित किया जाता है।

इस पर वरिष्ठ मण्डल कार्मिक अधिकारी का आदेश प्राप्त है।

After issuing the order Sri Om Prakash wrote a letter dated 12.9.2003 which reads as under:-

सविनय निवेदन है कि मेरा आशुलिपिक गति परीक्षा 100 शब्द प्रति मिनट होना है तत्पश्चात् मेरी पदोन्नति देय होगी। निजी कारणों तथा अपने अस्वस्थता के कारण प्रार्थी गति परीक्षा देने में असमर्थ है तथा गोपनीय आशुलिपिक वेतनमान 5000–8000 में पदोन्नति हेतु अपनी सहमति से बिना किसी दबाव के रिफ्यूजल देता है। प्रार्थी से कनिष्ठों को पदोन्नति दिये जाने में हमें कोई आपत्ति नहीं है।

Moreover as stated hereinabove it is admission on the part of workman Sri Rabi Ranjan Kumar Sinha that after the rejection of post by Sri Om Prakash, the applicant/workman was promoted vide order dated 20.10.2004 which is quoted hereinabove and in pursuance to the said order, he joined on the promotional post and at the time of joining he does not made any protest and thereafter taking into consideration the admission made by him vide Para-21 of his representation dated 7.10.2005 which is quoted hereinabove, that the said post was fallen vacant only on 13.10.2004 and immediately thereafter the applicant was promoted vide order dated 20.10.2004 so in view of said admission the relief as claimed by the applicant that he should be promoted w.e.f. 12.9.2003 and not from 20.10.2004 on the fourth vacancy of Confidential Steno in the grade of Rs.5000-8000 cannot be granted keeping in view the fact that the admission is the best evidence.

The Hon'ble Apex Court in the case of ***Nayan Bhagwantroo Gosavi Balajiwale Vs. Gopal Vinayak Gosavi & Ors, AIR 1960 SC 100*** held that admission is best piece of evidence that opposite party can rely upon if the same is not denied by the person who is made the same.

Further, the Hon'ble Apex Court in the case of ***Dharmarathmakara Raibahadur Arcot Ramashwamy Mudaliar Educational Institution Vs. Education Appellate Tribunal & Anr. (199) 7 SCC 332***, held that if the facts are admitted by a party and same is not denied in any manner then same is binding on it and on the basis of averments if an order is passed there is no violation of principle of natural justice.

In ***Nagbubai Ammal and Ors. Vs. B. Shama Rao & Ors., AIR 1956 SC 593***, the Apex Court held that admission made by a party is admissible and best evidence unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has been placed upon the judgment in ***Slatterie Vs. Pooley (1840) 6 M & W 664***, wherein it has been observed "What a party himself admits to be true, may reasonably be presumed to be so".

> *"The rule of natural justice must not be stretched too for. Only too often, 'the people who have done wrong seek to invoke the rule of natural justice' so as to avoid the consequence."*

Further, the Hon'ble the Apex Court in the case of ***Union of India Vs. Susaka Pvt. Ltd. (2018) 2 SCC 182***, the relevant paragraph 26 and 27 are quoted below:-

> *"26. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Cuilibet licet renuntiare juri pro se introducto. (see Maxwell on the Interpretation of statutes 12th Edition at page 328).*
>
> *27. If a plea is available-whether on facts or law, it has to be raised by the party at appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case. (see alo Rupchand Ghosh Vs. Savesran Chandra (1906) 33 cell 915 and Sri Karan Singh Vs. Sita Ram Aggrawal AIR 1994 SC page 364."*

Further, in the present case, it is also not in dispute rather admitted by the workman that on 20.10.2004, workman was promoted to the grade of Confidential Steno Grade-I, and raised the grievance by means of representation dated 07.10.2005, thereafter, he has not taken any step i.e. did not raise any grievance; however the same was raised at a belated state on the basis of present adjudication case i.e. reference dated 25.04.2018, referred to this Tribunal after 13 years, as such, he is not entitled for any relief. Because, Hon'ble Rajasthan High Court, Jaipur Bench, in the case of ***M.D./Chief Manager, Jaipur Agar, Rajasthan State Road Transport Corp., Jaipur v. General Secretary, Rajasthan Transport Workers Organisation, Jaipur, 2024 (182) FLR 892***, has held as under:

> *"6. In the case at hand, the respondent-workman was appointed on the post of Driver vide order dated 17.12.1986. Accordingly, the benefit of first selection scale became due after nine years, sometime in 2004-2005. The same was not done and neither was the non-grant of the benefit at the time was challenged by the respondent-workman. The benefit of first selection scale was only granted vide order dated 06.04.2004. This deferment was also not challenged immediately and was only challenged for the first time in 2013. The first issue that is to be decided by this Court is what effect, if any, would this delay have on the merits of the case.*
>
> *7. To decide the first issue, recourse may be taken to Hon'ble Supreme Court judgment of Mohan Lal (supra), the relevant portion of which is reproduced as under:*
>
> > *"19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh [Asstt. Eng., Rajasthan Development Corpn. v. Gitam Singh], that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.*

19. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 1.11.1984 to 17.2.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from 18.2.1986. The workman raised the industrial dispute in 1992 i.e. after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief."

Further, the Hon'ble Supreme Court in Sadhu Singh (supra), held as under:

"6. We shall at the outset deal with the issue of limitation. The respondent was retired compulsorily from service on 4.1.2003. Original Civil Suit No. 41 of 2010 was instituted in 2010. The trial Judge as well as the first appellate court were of the view that the suit was not barred by limitation since the representation of the respondent for the grant of the three selection grades was rejected on 18.1.2010. The first appellate court, while concurring with the trial Judge also noted that the "final request" made by the respondent-plaintiff on 18.1.2010 was rejected and hence the suit was within limitation.

7. The respondent waited for seven long years after his retirement to pursue a claim for the grant of selection grade. This was clearly beyond the residuary period of limitation of three years provided in Article 137 of the Schedule to the Limitation Act, 1963. That apart, in the decision of this Court in State of Rajasthan v. Shankar Lal Parmar, the Court has considered the ambit of the scheme for selection grade. This Court has held thus:

"6. Another important and relevant clause in the said order for our perusal is Clause 7, which is also reproduced hereinbelow:

7. Selection grades in terms of this order shall be granted only to those employees whose record of service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of grant of the selection grade.'

7. Clause 7 makes it clear that only those employees would be entitled for grant of selection grades, whose service record has been satisfactory and are otherwise eligible for promotion on the basis of seniority but have not been able to get the same as there might not be any channel of promotion or for want of sanctioned posts in the cadre."

8. The Court held that in terms of Clause 7, only those employees whose service record has been satisfactory could be entitled to be granted selection grade. In this context, the Court held:

"17. Clause 7 further makes it clear that only those/such employees would be entitled to be granted selection grade whose service record has been satisfactory. This implicitly shows that the person who has an untainted, unblemished, clean and unpolluted record in service would be treated on a higher pedestal than those who have either tainted, blemished, unclean or polluted record. This obviously appears to be a reasonable classification and is under the ambit and touchstone of Article 14 of the Constitution. There is neither any ambiguity nor any doubt in the same."

9. On the touchstone of the above principles, it is evident that the respondent had been subjected to several disciplinary proceedings and as many as 19 charge- sheets were issued against him which resulted in penalties of a varying nature. The service record of the respondent cannot be regarded as untainted or clean.

10. Ms Nidhi, learned counsel for the respondent submitted that some of the penalties which were imposed on the respondent were without cumulative effect. The consequence of the withholding of increments without cumulative effect is that after the period prescribed, the respondent would be entitled to restoration of the original pay scale or the original pay. However, this does not obviate the position that the imposition of the penalty itself indicates that the service record of the employee was not satisfactory. Another submission which has been urged is that the penalties were of a minor nature. Assuming that to be so, it is evident that for the grant of selection grade, the respondent did not fulfil the requirements of a clean record of service. The grant of the selection grade is not a matter of right and was subject to the terms and conditions which were stipulated. The respondent failed to fulfil these terms and conditions.

11. For the above reasons, we are of the view that both on the question of limitation as well as on merits, the respondent was not entitled to the relief which was sought. The suit instituted by the respondent resp seven years after he had demitted office was barred by limitation. That apart, the respondent failed to meet the basic requirements for the selection grade." (Emphasis supplied)

Further, the Hon'ble Supreme Court, in Bichitrananda Behera (supra), after considering the erstwhile judgments of Union of India v. Tarsem Singh, Union of India v. N. Murugesan, and Chairman, State Bank of India v. M.J. James, concluded that delay and laches are vital in service matters, and can be seen as acquiescence."

AWARD

For the foregoing reasons the workman is not entitled for any relief as per the Reference No. L-41012/33/2017-IR(B-I) dated 25.04.2018 and the same is answered accordingly.

Lucknow.

30th September, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 13 फरवरी, 2025

का.आ. 214.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय लघु उद्योग विकास बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (104/2021) प्रकाशित करती है

[सं. एल - 12011/23/2021- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th February, 2025

S.O. 214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.104/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of The Small Industries Development Bank of India and others.

[No. L-12011/23/2021- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 104/2021

Ref. No. L-12011/23/2021-IR(B-I) dated: 22.11.2021

BETWEEN

The General Secretary. All India Small Industries Development Bank Employees Association Lucknow-

AND

The Small Industries Development Bank of India, Lucknow

AWARD

By order No. L-12011/23/2021-IR(B-I) dated: 22.11.2021 the present industrial dispute has been referred for adjudication to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"1. Whether the action of the management of SIDBI in not considering the vacancies arising due to death and superannuation as consequential vacancies and also not making recruitment on these vacancies is illegal and unjustified in eye of law or not?*
>
> *2. If yes, what action the management has to take in this regard?"*

In response to reference on 02.03.2022, statement of claim has been field, thereafter, written statement was filed on behalf of respondent.

On 06.05.2024, an application has been moved on behalf of applicant by General Secretary, Union Bank Employees Union U.P. Lucknow, the same is quoted hereunder:

> *"1. The reference order dated 22/11/2021 is on consequential vacancies arising out of death and superannuation only and the other broad parameters are left and thus the reference order is incomplete.*
>
> *2. Pursuing the above reference order the claim statement dated 02/03/2022 is also on limited points.*
>
> *3. In view of the above, the above reference order and the claim statement are incomplete in nature.*
>
> *Prayer*
>
> *wherefore it is most respectfully prayed that this Honorable Tribunal may be pleased to allow to withdraw the claim statement dated 02/03/2022 submitted in this case."*

Authorized representative of the workman on the basis of said application submits that he does not want to press the present industrial dispute and the same may be dismissed as not pressed.

Counsel for respondent has no objection.

Accordingly, in view of the above said facts, the claim of workman is dismissed as not pressed; and workmen are not entitled for any relief.

The reference under adjudication is answered accordingly.

Award as above.

Lucknow.

21st June, 2024

Justice ANIL KUMAR, Presiding Officer

Let two copies of this award be sent to the Ministry for publication.

नई दिल्ली, 14 फरवरी, 2025

का.आ. 215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नासिक के एयर ऑफिसर कमांडिंग के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुम्बई- नं. 2 के पंचाट (6/2016) प्रकाशित करती है।

[सं. एल - 14011/24/2015- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 14th February, 2025

S.O. 215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Mumbai No. 2* as shown in the Annexure, in the industrial dispute between the management of The Air Officer Commanding Nasik and their workmen.

[No. L-14011/24/2015- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

SHRIKANT K. DESHPANDE

Presiding Officer

REFERENCE NO. CGIT-2/6 of 2016

EMPLOYERS IN RELATION TO THE MANAGEMENT OF 25 ED AIR FORCE STATION, DEVLALI (SOUTH)

1. The Air Officer Commanding,

25 ED Air Force Station, Devlali (South)

Devlali,

Nashik (Maharashtra) - 422501.

AND

THEIR WORKMEN.

E.A.F. Employees Union

1. The General Secretary,

E.A.F. Employees Union,

C/o. Shri Ratan Uttam Kale,

At PO: Lahavit,

Tal & Dist. Nashik (Maharashtra) 422502.

APPEARANCES:

Party No. 1	:	Mr. A. K. Roy Advocate
Party No. 2	:	Mr. J. H. Sawant Advocate

AWARD

(Delivered on 03-10-2024)

1. This Reference has been made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Government of India, Ministry of Labour & Employment, New Delhi, order No. L-14011/24/2015-IR (DU) dated 09.02.2016. The terms of reference given in the schedule are as follows:

> *`Whether the action of the management of 25 Equipment Depot, Air Force Station, Deolali South, Deolali, Nasik under Indian Air Force in terminating the services of Shri Ratan Uttam kale, Casual worker/ Mess Boy, orally w.e.f. 21.10.2014 is just and proper? If not, what relief the workman concerned is entitled to ?`*

2. According to the Second Party he was working as Mess Boy in Airmen mess at Air Force Station Devlali of the First Party since 2007, continued in service as casual/ temporary basis on meagre amount of wages. He was qualified for the post of Mess Boy or Group-D employee in the establishment of the First Party. He demanded the status and privileges of the permanent workman however his services were terminated without following the provision of the Section 25 F of the Industrial Disputes Act 1947, by way of victimization, in violation of principles of natural Justice and by engaging unfair labour practice w.e.f. 21.10.2014. After termination he could not secure employment in any other establishment thus the Second Party prays for reinstatement with continuity of service with full back wages, by answering the Reference in affirmative.

3. The First Party resisted the claim by written statement denied all the contentions of the Second Party including the tenability of the Reference. The First Party contended that, the Second Party is not a, 'workmen' as defined u/s. 2 (s) of the Industrial Disputes Act. He was never appointed or selected nor given status of temporary employee as such there was no relationship on employer and employee therefore the claim of regularization against unsanctioned post is not tenable under Law. The Second Party also filed a case before the Central Administrative Tribunal Bombay, which is still pending and this fact has been suppressed by the Second Party, hence the present Reference as framed is not tenable under Law.

The First Party further contended that, the Second Party was working as hedge cutter on daily wages on requirement basis and being paid from hedge cutting fund from subscription of employee. His entry inside the camp area was on the basis of casual visitors issued in the year of 2010 from security station. He was never appointed against the sanctioned post nor temporary post by Air Force Authority competent to appoint. The Second Party stopped himself from working as hedge cutter (daily wage job) and return the entry pass to the station security section and thereafter that pass was cancelled. The First Party also contended that, during routine check by internal security staff on 19.10.2014, he was found selling milk in camp area unauthorisedly without bearing entrance pass of vendor and after interrogation he was warned. The Second Party appeared for selection as non-combatant (enrolled) and his name was recommended for final selection to the Headquarters of higher Authority, in which he was found medically unfit by medical Authority Kanpur, due to, "Otitis Media and Sub Std. Weight >1SD" problem, however he was seeking relaxation in merit on the ground of his past experience of his daily wages work and submitted various representations. Lastly, the First Party urged that, the claim of the Second Party is vexatious as such the Second Party is not entitled for relief as prayed and ultimately prayed that, the Reference be answered in negative.

4. My Learned predecessor framed the issues at Ex-10, I have rearranged the same as below-

ISSUES	**FINDINGS**
1) Whether the Second Party was, 'workmen' of management u/s. 2 of ID Act?	Yes.

2)	Whether there was a relationship of Second Party workmen and First Party and employer & employee?	Yes.
3)	Whether the action of the First Party is terminating the services of Second Party workmen w.e.f. 21.10.2014 is illegal, unjust & improper?	Yes.
4)	Whether the Second Party/workmen is entitled to be reinstated in service of the First Party w.e.f. 21.10.2014 with continuity in service with full back wages and other benefits?	Yes.
5)	Whether the Second Party workmen is entitled for relief as prayed?	Yes.
6)	What order?	As per order below.

REASONS

5. In support of his case the Second Party has filed its own evidence affidavit at Ex-13, subjected himself for cross examination. Whereas the First Party has filed an evidence affidavit of Sharan Singh, administrative assistant at Ex-16, subjected him for cross examination. The Second Party also put his reliance mainly on the copies of documents at Ex-15 placed before the Tribunal.

6. Issue No. 1 & 2- Both these issues are interdependent therefore answered together. The Second Party deposed before the Court that, he was working as mess boy since April 2007 in the establishment of the First Party and to substantiate the same he placed the various copies of attendance and payment register for the period May 2012, June 2012, July 2012, August 2012, September 2012, October 2012, November 2012, December 2012, January 2013, February to May 2013, June to September 2013, October to December 2013, January to March 2014, April 2014, May 2014, June 2014 and payment register for the November 2013, December 2013, January 2014 to April 2014, May 2014. Some of these documents bear the signature of the representative/officer of the First Party. All these documents were shown to the witness of the First Party, however he refused to comment on them. Not only this but, it is clear from the payment register that, the First Party was paying Rs. 1000/- per month to the Second Party considering his attendance on duty similarly the Second Party also placed the copy of letter dated 05.05.2016 signed by T. S. Bisht MWO WO IC Airmen mess management committee and the said letter is address to the Second Party, the same is in respect of intimation for collection of wages for the month of September & October 2014 and that letter was issued on 20.05.2016. It is clear from those documents that, the Second Party was working as part-time help on requirement basis as a mess boy for miscellaneous helping task in Airmen mess till 19.10.2014 and there is specific mention regarding wages, which were paid to the Second Party. It also reveals that, there are copies of certificate as well as identity pass, from which it is clear that, the Second Party was working as employee as a casual labour/ mess boy in the establishment of First Party since April 2007. In such circumstances it is clear that, the Second Party was working as a casual mess boy with the First Party and for his work he was receiving wages from the First Party therefore the Second Party is certainly a "workmen" as defined under the ID Act and though the Second Party was working as casual still there is a relationship of employer & employee between the First Party and the Second Party.

7. I have carefully gone through the decisions of **Madras High Court in Writ Petition No. 1185 of 1995 in Cholan Roadways Corp. ltd. v/s. Presiding Officer Labour Court & Ors., the decision of Supreme Court in state of Rajasthan v/s. Daya Lal and Ors. and judgment of Supreme Court in the case of State of Karnataka v/s. Uma Devi and Ors.** Both the decisions of Supreme Court are in respect of regularization of employee in service, whereas in the case in hand the Second Party is not claiming any regularization in service therefore the facts before me are distinguishable than had before the Apex court of the land therefore those decisions are not anyway helpful for the First Party in the present case.

8. In the decision of **Madras High Court in Writ Petition No. 1185 of 1995**, the workmen before the Court was bus body cleaning, he was allowed to clean the buses and for that he was getting Rs.1/- per bus after the cleaning operation. There was no documentary evidence before the Hon'ble Lordship in respect of employment of the workmen. However in the case in hand, the evidence of the witness of the First Party is very cryptic, he refused to comment the various copies of documents shown during cross examination. It seems from the document which was admitted by him, it has been clearly mentioned about the part-time mess boy for miscellaneous task in the mess and he was being paid wages to the Second Party monthly considering the present for work therefore the facts of this case of the matter before the Madras High Court is not anyway helpful to the First Party to establish before the Court that, the Second Party is not a "workmen" and there is no employer-employee relationship.

9. Much argued about filing of case before the Central Administrative Tribunal Mumbai, by the Second Party therefore the present Reference is not tenable under Law, however the Second Party in its rejoinder specifically stated that, the matter before Central Administrative Tribunal pertains to grievance of declaring him by Squadron Leader of the First Party declaring medically unfit for the post of Lascar and thereby depriving the Second Party from the appointment in the post of Lascar to which he was entitled under the policy of recruitment. It means the present dispute is altogether different that, the dispute pending before the Central Administrative Tribunal therefore I do not think that, on this count the present Reference is not tenable under Law. In short the Second Party is a "workmen" as defined u/s. 2 (s) of the Industrial Disputes Act therefore, there is employer-employee relationship between the First Party and the Second Party hence, I answer these issues in the **affirmative**.

10. Issue No. 3- It is worthwhile to mention here that, the Second Party has specifically pleaded/stated before the Court that, he was working with the First Party since April 2007 and worked with the First Party till October 2010. To substantiate the same, the Second Party filed various copies of documents on record. Though, the First Party denied this contention of the Second Party about the employment and also stated that, the Second Party stopped working since 2010, however the First Party could not justify the same by acceptable evidence. Moreover it is clear from the various copies of documents placed on record by the Second Party that, he was certainly working prior to May 2012 which falsify the contention of the First Party that, the Second Party stopped coming since 2010 and the document dated 20.05.2016 issued by MWO WO IC Airmen mess committee, which has been admitted by the witness of the First Party, it is clear that, the Second Party worked till September 2014 & October 2014 and also paid wages as per working days of the Second Party and the various copies of certificates issued by the officer of the First Party in favour of the Second Party shows that, the Second party was working since April 2007 with the First Party as such there is no hesitation to except that, the Second Party worked with the First Party during April 2007 to October 2014 with the First Party.

I may mention here that, though it is contended on behalf of the First Party that, the appointment of the Second Party was not against the sanctioned vacant post, he was not appointed by the Authority competent to appoint in the employment of the First Party therefore the Second Party has no right on the post and there is no question of termination much less illegal.

However even accepting the same, in my opinion all these facts are necessary to be considered while granting permanency to the employee and absolutely irrelevant in case of termination of employee, who worked continuously more than 240 days in a year with the employer. In the case in hand, the Second Party was continued in the employment since April 2007 to October 2014, therefore I do not think that, this aspect needs any consideration, while deciding the legality of termination of the Second Party.

It has sufficiently established before the Court that, the Second Party was employment of the First Party during April 2007 to October 2014, he was allowed to appear for selection as non-competent enrolled and his name was also recommended by the First Party in 2007. It goes to show that, the Second Party was in continuous service of the First Party and his services were terminated or it can be said that, he was not allowed to join on duty after 2014. It means the services of the Second Party were terminated w.e.f. October 2014. Admittedly, at the time of termination, no notice of one month nor retrenchment compensation was given as required u/s. 25 F of the Industrial Disputes Act, therefore the termination of the Second Party is certainly in violation of the provisions of the Sec. 25 F of the ID Act therefore the action of the First Party in terminating in services of the Second Party workmen w.e.f. 21.10.2014 is illegal, unjust & improper, hence, I answer this issue in the **affirmative**.

11. Issue No. 4 & 5- Once it is established that, the termination of the Second Party is in violation of the provisions of Sec. 25 F of the Industrial Disputes Act therefore liable to be quashed and set aside and the Second Party is entitled for the relief of reinstatement with continuity of service with full back wages and the Second Party has claimed the same by making it pleading in the statement of claim that after termination he could not secure employment in any other establishment and the First Party failed to bring on record about the gainful employment of the Second Party after termination. In such circumstances the Second Party is entitled for the relief as claimed.

However the First Party stated before the court that, the appointment of the Second Party was not against the sanctioned vacant post, the Second Party was not appointed by Authority competent to appoint in the employment and also argued before the Court about non-availability of the post with the First Party. Even accepting the same and in the light of fact that, after 2014, the Second Party remained unemployed still I do not think that being a casual worker the Second Party lives with his family without money since last ten years, in such circumstances in my opinion the

Second Party is entitled for the relief of reinstatement with continuity of service and 50% back wages as per the last drawn salary of the Second Party.

I may mention here that, in view of the observations mentioned above, if the reinstatement of the Second Party is not possible for the First Party due to non-availability of the post, then instead of reinstatement with 50% back wages, the First Party is directed to pay full back wages to the Second Party as per his last drawn salary till the implementation of award and this Award will be certainly executable. In short, the Second Party is entitled for relief partly as prayed, hence, I answer these issues accordingly.

In the result, I proceed to pass the following order-

ORDER

1. The Reference is answered in the affirmative.

2. The Second Party is entitled for the relief of reinstatement with continuity of service and 50% back wages as per the last drawn salary, which he was getting at the time of termination even if the reinstatement is not possible the First Party is directed to pay full back wages to the Second Party @ of last drawn wages of the First Party within a period of three months from the date of publication of Award.

3. Both the parties bear their own costs.

4. The copy of Award be sent to the Government.

SHRIKANT K. DESHPANDE, Presiding Officer

Date: 03-10-2024

नई दिल्ली, 14 फरवरी, 2025

का.आ. 216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एएससी सप्लाई नारायण, राजौरी, केंद्र शासित प्रदेश जम्मू और कश्मीर के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़**-II के पंचाट (34/2023) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आई आर (बी-I)-05]

सलोनी, उप निदेशक

New Delhi, the 14th February, 2025

S.O. 216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 34/2023) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of ASC Supply Narain, Rajouri , UT of Jammu and Kashmir and their workmen.

[No. L-12025/01/2025- IR (B-I)-05]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh

(Presided over by Mr. Kamal Kant).

ID No. 34/2023

Registered on:-05.10.2023

Sh. Ajay Kumar, C/o Kalar, Narain, Rajouri, Jammu and Kashmir-185151.

-------- Applicant

Versus

ASC Supply Narain, Rajouri, UT of Jammu, Jammu and Kashmir.

----Respondents

Present:- None for Workman

None for management.

Award : 06.11.2024

Central Government vide Notification No.08 (11)/2022/RLC/JMU Dated 04.10.2023, under sub-section 5 of Section 12 read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the demand of Shri Ajay Kumar C/o Kalar, Narian, Rajouri, UT of Jammu and

Kashmir for regularization of his service w.e.f. 12.10.2004 in the ASC Supply, Narian, Rajouri, UT of Jammu and Kashmir is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?"

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements on 21.11.2023 for 06.02.2024. The notice sent to the workman, referred above, was duly delivered to the workman on 28.11.2023. But no one turned up on behalf of workman 06.02.2024 and reference was adjourned for 04.07.2024. On 04.07.2024, notice was again issued to the workman for 06.11.2024 for appearance and filing claim statement. The said notice was delivered to the workman on 03.08.2024. Today also no one turned up on behalf of the workman. The workman has been given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his case against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सर्व हरियाणा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़**-II के पंचाट (56/2021) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आई आर (बी-I)-06]

सलोनी, उप निदेशक

New Delhi, the 14th February, 2025

S.O. 217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Sarva Haryana Gramin Bank and their workmen.

[No. L-12025/01/2025- IR (B-I)-06]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh

(Presided over by Mr. Kamal Kant).

ID No. 56/2021

Registered on:-03.03.2022

Sh. Sunder son of Sh. Leelay, R/o VPO Pali, Distt. Faridabad, Haryana.

----Workman/Applicant

Versus

Sarva Haryana Gramin Bank, Branch Pali, Distt. Faridabad, through its manager/authorized signatory.

----Respondent/ Management

Present:- None for Workman.

None for Management.

AWARD

DATED : 01.11.2024

1. This is a claim filed directly U/s 2-A of the ID Act by authorized representative for the workman on 03.03.2022. The certificate of Assistant Labor Commissioner (Central) Karnal is dated 02.02.2019 which shows that matter could not be settled. Workman has challenged his termination order dated 07.02.2019 as such case is cognizable under the Section 2-A of the ID Act 1947. Notice was issued to the parties for 12.07.2022.

2. Ld. Counsel for workman appeared on 12.07.2022 and filed copy of claim and the case was adjourned for 11.10.2022 for service of management. Sh. Tarun Dhingra appeared on behalf of management, however, no written statement was filed. Even workman has not appeared since 11.01.2024 and the case was adjourned for 21.03.2024, 31.05.2024, 05.08.2024 and 01.11.2024. Today also nobody has appeared on behalf of both the parties.

3. Since neither the workman is appearing to prove his case against the respondent/management nor the management has appeared or filed any written statement, as such, this Tribunal is left with no choice, except to pass a "No Claim Award". Accordingly, "No Claim Award" is passed in the present reference.

4. Let copy of this award be sent to the appropriate Government as required under Section 17 of the Act for Publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **स्टेट बैंक आफॅ इंडिया** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़**-II के पंचाट (62/2018) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आई आर (बी-I)-07]

सलोनी, उप निदेशक

New Delhi, the 14th February, 2025

S.O. 218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.62/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2025- IR (B-I)-07]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.62/2018

Registered on:-03.07.2018

Sh. Shambhu Kumar S/o Ltd. Sh. Mahesh Prasad Sinha, R/o H.No.2271-A, Sector 42-C, Chandigarh.

……..Workman

Versus

1. The State Bank of India through its Dy. General Manager, ZBO, Chandigarh (Now ZBO, Panchkula).

2. The Regional Manager, RBO-I, State Bank of India, Madhya Marg, Sector-8, Chandigarh.

…..Respondents/Management

Order

Passed On:-22.11.2024

Present: Sh. O P Indal and Ms. Karamjit Sharma, Ld. Counsel for Workman.

Sh. Chandeep Singh along with Sh. Anup Kumar (Chief Manager, Law) and Sh. Ravi Kumar (Manager, HR) for Management.

1. This Order shall dispose of an application under Section 33 read with Rule 60 of Industrial Dispute Act, 1947 (hereinafter called the ID Act) for granting permission for dismissal of the workman applicant during pendency of

present proceedings.

2. The applicant was posted as Customer Assistant and CRO (Officiating) at HCS Branch, Chandigarh. He on his own opened a saving account No.20053157144 in the name of Shri Bansi Lal, former Chief Minister, Haryana and carried out various unauthorized transactions amounting to Rs.6,26,930/- in the year 2013, whereas Sh. Bansi Lal has expired in 2006. Preliminary enquiry was conducted, on the basis of which the matter was reported as fraud to Reserve bank of India for Rs.6,26,930/-. An FIR Ex.M3 dated 16.02.2016 was lodged informing the said fraud and hence he was placed under suspension by the competent authority. Vide letter dated 28.01.2016 Ex.M1 explanation of the applicant was sought, who filed reply Ex.M2 dated 08.02.2016. However, disciplinary proceedings were kept in abeyance in terms of para no.4 of memo of settlement dated 10.04.2002 executed between Union and the Bank. The departmental proceedings were initiated and the applicant was charge-sheeted on 08.03.2017 after a period of one year as per para no.4 of memo of settlement. Five charges were framed against the applicant vide charge sheet dated 08.03.2017 Ex. M4. Though there was no violation of memo of settlement dated 10.04.2002, however, the applicant issued frivolous demand notice challenging the issuance of charge sheet with intent to delay the process. The applicant submitted his defence in response to the charge-sheet. Appointment of enquiry officer was intimated to the applicant and he was given opportunity to participate in the enquiry and an officer of the rank of Chief Manager was deputed to conduct the departmental enquiry against the applicant-workman. Detailed enquiry was conducted after giving due opportunity to the applicant-workman. After leading the entire evidence and statements of prosecution as well as defence, charges No.1 to 4 stood proved against the applicant-workman. However, charge No.5 remained unproved against the applicant-workman. Copy of enquiry report Ex.M5 dated 19.01.2018 was supplied to the applicant, which was received by him vide letter dated 20.02.2018 Ex.M6. However, no reply to letter dated 20.02.2018 Ex. M6 was filed by the applicant despite issuance of various letters Ex.M7 dated 01.03.2018, Ex.M8 dated 08.03.2018 and ultimately, the applicant workman submitted his objections Ex.M11 on 27.03.2018. Objections were duly considered by the management and on 04.05.2018 respondent management issued tentative major penalty of "dismissal without notice" vide Ex.M12 under Para 6(a) of the Memorandum of Settlement dated 10.04.2002. The applicant was asked to appear before the disciplinary authority on 15.05.2018 at 11:00 a.m. for personal hearing, who submitted his representation on 02.06.2018 which was duly considered by the management and the matter was decided on 02.06.2018 itself vide Ex.M13A. However, the workman refused to take the copy of the order dated 02.06.2018. Before communication of final order dated 02.06.2018, the applicant received summons from this Tribunal on 13.07.2018 to appear before this Tribunal on 17.08.2018 and order dated 02.06.2018 could not be served upon the applicant in view of statutory bar contained in ID Act. In the meantime, the Disciplinary Authority was changed and the workman was granted opportunity of hearing to appear before new Disciplinary Authority on 27.01.2023 vide letter dated 25.01.2023 Ex.M16, who submitted his representation on 27.01.2023 Ex.M17. However, final order could not be announced as the matter is pending before this Tribunal. In the reference received by this tribunal, the workman has challenged the charge sheet dated 08.03.2017. The applicant-workman has already received a sum of Rs.22,00,000/- approximately since June 2018 to January 2023 as salary/suspension allowance and under these circumstance, it is prayed that permission may be granted to serve final order on the applicant-workman.

3. Notice of the application was given to the applicant-workman who filed reply raising several preliminary objections regarding maintainability of the application. The application is vague and is incomplete. The application is based on sham enquiry report prepared in violation of principle of natural justice. It is maintained that since the workman has done nothing and made an escape goat and the real culprit has been let out. Local police is still investigating the matter and challan is yet to be presented. Since the matter has been handed over to third agency, the bank lost its right to proceed in the matter on the pretext of domestic enquiry. The bank has misrepresented the memo of settlement which is incomplete. Lodging of FIR in terms of Para no.4 of memo of settlement dated 10.04. .2022 is fact but issuance of charge-sheet is illegal and wrong. The enquiry has been conducted in violation of memo of settlement. Remaining averments have been denied and it is maintained that present application is not maintainable under Section 33 of the ID Act and hence the same be dismissed.

4. While arguing the case, Ld. Counsel for the management contended that in this case present dispute cannot be referred as industrial dispute because it is an individual dispute as the workman has challenged to the charge-sheet issued against him. As per Section 2A of the ID Act, only in circumstances as mentioned therein can be Industrial Dispute, which are discharge, dismissal, 'retrenchment and termination and matter incidental thereto. The case of the present applicant does not fall in any of the above instances rather he has challenged the charge sheet in this case which cannot be termed as an Industrial dispute and the same is an individual dispute. On the present dispute as per applicant his application has been espoused by SBI SC/ST Employees' Welfare Association which cannot espouse his case, as only registered Trade union can espouse the case of an individual workman as per Section 2(k) and 2(qq) of the ID Act. As per Section 2 (qq) only registered Trade Union can espouse the case of individual workman only then it is maintainable. To support his view he has placed reliance upon case titled as ***Management of Messers Hotel Samrat V. Government of NCT, (Delhi) reported as 2007(4)S.C.T. 514***. He referred to Para No.12 of the above titled judgment referred is reproduced as under:

> *Para No. 12 ... The question arises how the espousal can be inferred. Espousal means that the dispute of an individual workman is adapted by union as its own dispute or a large number of workmen give support to the*

*cause of an individual workman... **Does mere lending of name of the union by the union secretary while raising the conciliation proceedings or for issuing notice amount to 'espousal' of cause?.....** In each case, for ascertaining whether an individual dispute has assumed character of an industrial dispute, the test is whether on the date of reference, the dispute was taken up and supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of employees. **Hence, by mere passing of a resolution by other members of the union, the case of the appellant that the cause of concern workmen was supported by the other employees of Hindu Board, could not be supported. The Supreme Court observed that unless an individual dispute was taken up by union of employees of the employer or by appreciable number of employees of the union, it remains as an individual dispute and does not become an industrial dispute.***

5. As per above para, this dispute of applicant was Individual dispute and not Industrial dispute. Trade Union has been defined under Section 2(qq) of the ID Act which means a Trade Union Registered under the Trade Union Act. Even his application before Conciliation Officer was not maintainable as per Rule 4(c) of the Industrial Dispute Central Rule, 1957 as his application was not attested by any officer of Trade Union as defined under 2(qq). He further contended that it is settled principle of law as held in Calcutta Port Trust Union v. Haldia Shore Ship & Transport Handling Work. Co-op. (Calcutta), reported as 2013(16) S.C.T. 776, that only a Registered Trade Union or group of employee having common cause can espouse a case of individual. Para 13 of the judgment is reproduced as under:

The word 'Registered Trade Union' is of great significance and can imbibe within it's contour the Trade Union Register under the Trade Unions Act and not otherwise. The said section further takes care of the interest of the workman who is not a member of a Trade Union to be represented by any member of the executive or other office bearer of any Trade Union connected with or by other workmen employed in the industry in which the worker is employed. In any of such eventualities, the representation is to be made through a Trade Union Registered under the Trade Unions Act and not through any Association or Union which is not recognized under the said Act.

So even as per above said para the case of the applicant could not have been espoused by the SBI SC/ST Employees' Welfare Association. As per above para, only registered trade union can espoused the case of individual workman and not any association. 6.It is further contended by the ld. counsel of the Management that the Tribunal/Court has jurisdiction to decide whether espousal of the dispute is proper or not even if the reference has not been challenged. To support his view he placed reliance upon case titled as ***Lord Krishna Textile Mills National Textile Corpn. V. Rampal Singh (Delhi) reported as 2015 (6)S.C.T. 718*** as decided by Hon'ble High Court Delhi, vide which it was held that espousal goes to the root of the matter and objection of maintainability cannot be declined to be decided merely on the ground that reference has not been challenged. Relevant para of the judgment is being reproduced hereunder:

Para No. 25. It is pertinent to state here even at the cost of repetition that a Tribunal/Labour Court would get jurisdiction to decide a dispute only when it is properly espoused under the provisions of the ID Act. In such a case, any objections to non-espousal or improper espousal cannot be brushed aisde lightly by the Tribunal/Labour court rather, must be heard and decided before hearing the parties on merits. Further, merely because a party to a dispute had not objected to the terms of reference would not be sufficient enough a ground not to entertain objections to proper espousal of a dispute. As I have already observed that the issue of espousal goes to the root of the matter, hence objections, if any to espousal must be decided first before a tribunal goes any further to decide on the merits of the dispute.

He further contended that it is settled principle of law that without touching merit of the case, award can be passed on issue of maintainability. To support this view he has placed reliance upon ***Ajay Kumar Vs. Sumitomo Mitusi Banking Corporation, (Delhi)*** wherein it has been held as under:

*Para 37. In light of the above cited judicial dicta, it is clear that the **Tribunal's jurisdiction is contingent upon the existence of an industrial dispute as defined by the ID Act and the jurisdiction of the Tribunal is tied to the presence of an industrial dispute, which necessitates support from a Union or a substantial portion of the workforce.***

*Para 38. Furthermore, it is also clarified **that if the Tribunal determines that there is no espousal of the dispute, it loses jurisdiction to adjudicate the matter as it can only arbitrate industrial disputes.** Therefore, the question of adjudication of the dispute does not arise if the Tribunal holds that the dispute raised by workmen is not an industrial dispute.*

7. While rebutting the argument, ld. counsel for the workman contended that in this case, present dispute is Industrial Dispute and covered under Section 2(k) of the ID Act, as there is no mention of registered Trade Union as alleged by the management in Section 2 (k) that the case of workman should be espoused by registered trade union, whereas as per Section 2(k) of Industrial Dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The claim petition of claimant was espoused by registered association i.e. SBl SC/ST Employees Welfare Association before the Assistant

Labour Commissioner and thereafter, it was referred by the appropriate Government. In the present case the association has duly espoused the claim of the claimant and file duly signed resolution with the claim petition and further the objection of espousal by SBI SC/ST Employees Welfare Association has already been decided by the appropriate Government when it was taken at the initial stage before appropriate Government. The appropriate Government had decided and referred the claim of workmen under Section 2(k) of ID Act after verifying the same. The management till date had not challenged that reference, if management bank was having grievance against this reference than it can be challenged before appropriate Court of law and now at this stage again it cannot taken the same objection which is not maintainable at this stage. That the Hon'ble Delhi High Court has held in case titled as ***Management of Messers Hotel Samrat V. Government of NCT(Delhi) reported as 2007(4) S.C.T. 514*** in Para No.12 as under:

> *The dispute between an individual workmen and the employer can be treated as an Industrial Dispute only where the workmen as a body or a considerable Section of them, make common cause with the Individual workmen and espoused his demand*.

8. Hence, in the present case the cause of the workmen espoused by the association after passing resolution duly signed by the Group/ members workmen and even in the case titled as ***Lord Krishna Textile Mills National Textile Corpn. V. Rampal Singh (Delhi) reported as 2015 (6) S.C.T, 718***. In Para No.26 of the Judgment, the case was remanded back with the direction to frame the issue on espousal and decide the same after affording opportunity to both the parties to present their case in accordance with law.

Secondly, the association has supported the claim petition of the workman and even before this Court, the association has not withdraw till date the cause of the claimant. It is pertinent to mention here that this fact needs to be proved by leading evidence by both the parties whereas the management fails to prove the fact that the Association had not espoused the case of the workmen and has withdrawn from the claim/demand notice. Even in Failure of Conciliation Report (Annexure C-5) of claim petition and in reference, (Annexure C-7) applicant was addressed as C/o (Care of) General Secretary SBI SC/ST Employees Welfare Association which clearly shows that the cause of the workman was espoused by the members of association.

9. The other objection of the Management that the Union/ Association has not come for evidence in support of workman goes away as the association which has espoused the claim of workmen would be called in evidence stage to prove the case of workmen. In case titled as **John D. Souza Vs. Karnataka State Road Transport**. The Hon'ble Supreme Court has observed in Para No.23, 26 27 in respect of Section 33 of ID Act has observed as under:

> ***Para 23***. *Having held so, it should not take long to trace out the legislative object behind incorporation of Section 33, including sub section (2) thereof. The caption of Section 33 itself sufficiently hints out that the primary object behind this provision is to prevent adverse alteration in the conditions of service of a workman when 'conciliation or any other proceedings in respect of an 'industrial dispute' to which such workman is also concerned, are pending before a Conciliation Officer, Board, Arbitrator, Labour Court or Tribunal. The Legislature, through Section 33(1)(a) and (b) has purposefully prevented the discharge, dismissal or any other punitive action against the workman concerned during pendency of proceedings before the Arbitrator, Labour Court or a Tribunal even on the basis of proven misconduct, save with the express permission or approval of the Authority before which the proceedings is pending. Sub-section (2) of Section 33 draws its colour from sub-section (1) and has to be read in conjunction thereto. Sub-section (2), in fact, dilutes the rigours of sub-section (1) to the extent that it enables an employer to discharge, dismiss or otherwise punish a workman for a proved misconduct not connected with the pending dispute; in accordance with Standing Orders applicable to the workman or in absence thereof, as per the terms of contract; provided that such workman has been paid one month wages while passing such order and before moving application before the Authority concerned 'for approval of the action', In other words, the Authority concerned (Board, Labour Court or Tribunal, etc.) has to satisfy itself while considering the employer's application that the 'misconduct' on the basis of which punitive action has been taken is not the matter sub-judice before it and that the action has been taken in accordance with the standing orders in force or as per terms of the contract. The laudable object behind such preventive measures is to ensure that when some proceedings emanating from the subjects enlisted in Second or Third Schedule of the Act are pending adjudication, the employer should not act with vengeance in a manner which may trigger the situation and lead to further industrial unrest.*

> ***Para 26***. *The scope of enquiry vested in a Labour Court or Tribunal under Section 33(2)(b) has been the subject matter of a catena of decisions by this Court. In Martin Burn Ltd. v. R.N. Bangerjeel, a Three-Judge Bench of this Court considered the scope of enquiry under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 whereunder also permission to discharge a workman was required to be obtained in the manner which was somewhat similar to*

1. 1958 SCR 514 Section 33 (2)(b) of the 1947 Act. This Court, thus, held:-

> *"27. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a*

case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. [Emphasis by us]

Para 27*.A Three-Judge Bench of this Court in Punjab National Bank Ltd. v. Workmen2, considered and interpreted the scope of Section 33 to lay down that the jurisdiction of the Tribunal in dealing with such applications is limited. It was held that:-*

"24. Where an application is made by the employer for the requisite permission under Section 33 the Jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts

2.(1960) 1 SCR 806 to victimisation or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according as it holds that a prima facie case is or is not made out by the employer.

Ld. Counsel for workman thus contended that the application under Section 33 be dismissed.

10. I have given due consideration to the arguments advanced by the ld. Counsel of the parties and have gone through entire file very carefully.

11. So far this argument of ld. counsel for the workman that in Section 2(k) of Industrial Disputes A ct,1947 there is no mention of "trade union" and as such any association can espoused the case of individual worker, the same is devoid of merits as in this regard finding of Hon'ble Delhi High Court in ***Lord Krishna Textile Mills National Textile Corporation Versus Rampal Singh (Delhi) 2015(6) SCT 718*** case given in Para Numbers 15,16,17,18,19,20 and 22 are relevant which are reproduced :-

15. The words 'Industrial Dispute' convey a meaning to the ordinary mind that a dispute must be such that would affect a large group of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest, such as wages, bonus, allowances, pensions, provident fund, number of working hours per week, holidays and so on. It is a settled law that an industrial dispute under Section 2(k) of the ID Act is raised before the authority concerned on a collective basis because a dispute not espoused by others of the class to which the aggrieved party belongs is not an industrial dispute. Therefore, a dispute between an employer and a single workman cannot be industrial dispute unless it is taken up by a number of workmen or trade union.

16. It can be seen from above that an industrial dispute can be raised either for a workman or any person regarding whom the workmen have substantial interest in the employment or non-employment or terms of employment or conditions of labour. The expression, 'any person' in the definition has not been equated with workmen and it has a wider connotation. But 'any person' is also subject to limitation under the process of judicial interpretation. The expression "any person' must have a direct relation with the workmen about whose employment or non-employment or terms of employment or conditions of labour, the workmen have direct and substantial interest. It means that any person must be an employee of the industry in which the workmen are employees as well. The next point for consideration in this series is that whether an individual dispute can become an industrial dispute under section 2(k) of the ID Act?

17. Prior to 1965, a workman who claimed relief for himself, or a few workmen, who individually claimed relief for themselves had no remedy under the ID Act unless their cause was espoused by a substantial Section of other workmen of the same establishment. There were only two methods by which h such disputes could have been espoused, namely:-

(i) By a collective demand made by a substantial section of workmen; or

(ii) By espousal of individual causes by a trade union representing a substantial section of the workmen of the industry.

18) In this context, the Hon'ble Supreme Court in ***Workmen of Dimakuchi Tea Estate Versus The Management of Dimakuchi Tea Estate, AIR 1958 Supreme Court 353*** *observed as under :-*

"15. We reach the same conclusion by approaching the question from a somewhat different standpoint.

Ordinarily, it is only the aggrieved party who can raise a dispute' nit an industrial dispute is put a collective basis, because it is now settled that an individual dispute, not espoused by others of the class to which the aggrieved party may belong, is not an industrial dispute within the meaning of Section 2(k). As Issacs), observed in the Australian case of ***George Hudson Ltd. Versus Australian Timber workers' Union, 32 CLR at P. 441(B);***

"The very nature of an 'industrial dispute' as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individual hen working from the specific individuals then employing them, and not for the moment only, but for the class of employees from the class of employers.. It is a battle by the claimants not for themselves alone."

19) Thus before 1965, the court had consistently taken a view that a dispute which is neither a collective demand of a substantial section of workmen nor was an individual cause espoused by a trade union, such a dispute was an 'individual dispute and did not attain the character of an 'industrial dispute' so as to give jurisdiction to the appropriate government to make a reference for adjudication. However, it resulted in severe hardship to workmen in cases where the question of discharge dismissal, retrenchment or termination of services of a workman was in issue. At that time, the workmen had to persuade the union for espousing their case falling in such categories and the Union in turn, may or may not have taken initiatives to espouse even their genuine causes.

20) To prevent such hardships, Section 2A was inserted in the scheme of the ID Act vide Section 3 of Amendment Act 35 of 1965, which came into effect from 01.12.1965 (herein after referred to as the 1965 amendment) Section 2A of the ID Act reads as under :-

2A Dismissal, etc., of an individual workman to be deemed to be an industrial dispute-

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were dispute referred to it by the appropriate government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate government (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal retrenchment or otherwise termination of service as specified in sub-section(1).

22) What is observed from above is that the disputes falling under the categories specified under Section 2A of the ID Act are industrial disputes and all other kinds of disputes unless they are espoused properly through a substantial number of fellow workmen would fall under the category of individual disputes' which are not a subject matter of concern under the ID Act. Clearly, individual disputes cannot be adjudicated and decided under the ID Act as they do not fall under the definition of the expression 'industrial dispute' as defined under section 2(k) thereof.

12. A perusal of aforesaid judgment makes it ample clear that as per Section 2(k) of the ID Act that a dispute must be such that would affect a large group of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest, such as wages, bonus, allowances, pensions, provident fund, number of working hours per week, holidays and so on. A dispute between the employer and a single workman cannot be an 'industrial dispute unless it is taken up by a number of workmen or trade union.

Further, Section 2(qq) of ID Act defines "Trade Union" as under :-

"*Trade union" means a trade union registered under the Trade Unions Act 1926."*

14. Further, Hon'ble Supreme Court in case titled as B***. Siriniwasa Reddy Versus Karnataka Urban Water Supply and Drainage Board Employees Association and others 2006 AIR (Supreme Court) 3106*** held that in our opinion, the High Court gravely erred in refusing to examine the question of locus standi on the ground that it is decided in the earlier writ petition which operates as res judicata and that the petitioners even otherwise have locus standi. Chapter-lll of the Trade Union Act 1926 sets out rights and liabilities of the registered Trade Unions. Under the said enactment, an unregistered trade union or a trade union whose registration has been cancelled has no manner of right whatsoever even the rights available under the ID Act have been limited only to those trade unions which are registered under the Trades Unions Act 1926 by insertion of clause 2(q)(q) in the ID Act w.e.f. 21.08.1984 defining trade union to mean a trade union registered under the Trade Unions Act, 1926.

14. Thus contention raised by learned counsel for workman that trade union does not appear anywhere in Section 2(k) is devoid of merits. So far as this contention of learned counsel for workman that appropriate government while referring the matter to the tribunal has decided that SC/ST welfare association was competent to espoused the case of applicant the same is devoid of merits as the appropriate government has no authority to decide the case on merits and to support this view reliance can be placed on ***Calcutta port Trust Union Versus Haldia Shore Ship and Transport Handling Workers 2013(16) S.C.T. 776***. Para 13 of the said judgment is relevant and reproduced as under:-

"The word 'Registered Trade Union' is of great significance and can imbibe within its contour the Trade Union Register under the Trade Unions Act and not otherwise. The said section further takes care of the interest of the workman who is not a member of a Trade Union to be represented by any member of the executive or other office bearer of any Trade Union connected with or by other workmen employed in the industry in which the worker is employed. In any of such eventualities, the representation is to be made through a Trade Union under the Trade Union Act and not through any Association or Union which is not recognized under the said Act.

15. Since in this case of the applicant was espoused by the SC/ST Association thus the government could not have referred the matter to this tribunal and reference is bad in law. In this regard, case titled as ***Shri Nand Kishore versus Dilshad Public School and another 2022 NCDHC 5424*** is also relevant wherein Hon'ble Delhi High Court held as follows :-

"*Therefore, it is only the appropriate government, who is competent to decide whether the dispute(s) is to be referred to the Industrial Tribunals set up under the Act and insofar as Conciliation Officer is concerned, his role is that of a mediator and no more. It has been held in various judgments that Conciliation Officer does not discharge judicial or quasi-judicial functions and his acts are merely administrative in nature. Relevant it is to note that even if the Conciliation Officer brings about a settlement and records the same, the report so rendered is not an 'award' defined under the ID Act as an interim or final determination of an industrial dispute by a Labour Court or Industrial Tribunal. From the scheme of the ID Act, by no stretch of imagination can it be said that the functions of a Conciliation Officer are akin to that of an Industrial Tribunal or a Labour Court. Looking at the industrial unrest that usually takes place in management-workman dispute, Legislature has provided a machinery for settlement of disputes but certainly without any powers to the Conciliation Officer to adjudicate upon them. The only and avowed object and purpose for this machinery under the Act is to provide a step to attempt to bring an end to the disputes and differences between the rival parties so that the disputes do not travel to Labour Courts or Industrial Tribunals.* ***In East India Ceramics and others (supra), the Madras High Court*** *has ruled as follows:*

"45. The Conciliation Officer is not vested with the powers to adjudicate on industrial dispute, but he can try to persuade the parties to come to a fair and amicable settlement, besides he has to exercise his resourcefulness and power of persuasion to try to induce and persuade the parties to come to a fair and amicable settlement. The Conciliation Officer is not competent to decide the various points n issue between the opposing parties of adjudicate the dispute. The functions of the Conciliation Officer under Section 12 is not of either judicial or quasi-judicial nature. If it is to be held quasi-judicial or judicial function, then in connection with whatever he does under section 12 or other provisions of the Act or Rules, the formalities of a judicial trial would have to be observed. The duties which the Conciliation Officer performs are only administrative and are purely incidental to industrial adjudication as has been held by the Apex Court in ***Jaswant Sugar Mills Ltd. Meerut Versus Lakshmi Chand*** *(cited supra).*

46. The Conciliation Officer is not exercising judicial or quasi- judicial powers or authority nor he is a quasi-judicial or judicial authority but he is a pure and simple administrative functionary. Even where a Conciliation Officer refused to take a dispute for conciliation after his being satisfied with the action of management in regard to the promotion in a particular case was bona fide his order could not be interfered with by the High Court in exercise of writ jurisdiction as has been held by the Division Bench of the Bombay High Court in Paints Employees Union Vs. M.,D. Nail (1966) 1 L.LJ. 579.

47. Thus the Conciliation Officer namely, the first respondent not being quasi-judicial authority nor he exercises a judicial or quasi-judicial function, no question of issue of prohibition prayed for would arise.

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49. In addition to the said aspect it is to be pointed out that the first respondent Conciliation Officer merely holds a conciliation and sends a report or persuade the parties to arrive at some settlement and beyond that he has no power or authority to adjudicate.

50. The writ of prohibition will lie in cases as to matter which are judicial in nature. In ***S. Govinda Menon Versus Union of India ASIR 1967 S.C 1274****, the Apex Court analyzing the case after law held thus:*

"The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain Courts or inferior Tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine courts or

Tribunals of inferior or limited jurisdiction within their inferior or limited jurisdiction within their bounds. It is well settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ also lies in a case of departure from the rules of natural justice."

16. In this case, failure report in case CS was submitted by ALC and government has endorsed the same and the government has not decided whether the association was competent to refer the matter or not. However, Para 46 of **Nand Kishore case (supra)** reads as under and is reproduced for the sake of clarity:-

46. The Conciliation Officer is not exercising judicial or quasi-judicial powers or authority nor he is a quasi-judicial or judicial authority but he is a pure and simple administrative functionary. Even where a Conciliation Officer refused to take a dispute for conciliation after his being satisfied with the action of management in regard to the promotion in a particular case was bona fide his order could not be interfered with by the High Court in exercise of writ jurisdiction as has been held by the Division Bench of the Bombay High Court in Paints Employees Union Vs. M.,D. Nail (1966) 1 L.L.J. 579.

Thus it does not lie in the mouth of the workman that the government has already decided the matter regarding espousal by the association.

17. So far this argument of management that in this case, reference was not challenged by the management and present objection is not maintainable on behalf of management. The same is devoid of merits in view of the law laid down in Lord Krishna Supra, Para 25 of which is reproduced as under:

"*Para No. 25. It is pertinent to state here even at the cost of repetition that a Tribunal/Labour Court would get jurisdiction to decide a dispute only when it is properly espoused under the provisions of the ID Act. In such a case, any objections to non-espousal or improper espousal cannot be brushed aisde lightly by the Tribunal/Labour court rather, must be heard and decided before hearing the parties on merits. Further, merely because a party to a dispute had not objected to the terms of reference would not be sufficient enough a ground not to entertain objections to proper espousal of a dispute, As I have already observed that the issue of espousal gees to the root of the matter, hence objections, if any to espousal must be decided first before a tribunal goes any further to decide on the merits of the dispute."*

18. So far as judgment titled as **John Disouza (**supra) referred by the ld. counsel for workman is concerned, the same rather supports the case of the management as in the said case it has been held that the tribunal is required to consider whether a prima-facie case has been made out that for dismissal of the employee, income and granting request permission under Section 33 of ID Act. In this regard, applicant has been charge-sheeted and he has challenged the same and simultaneously he has also participated in the departmental enquiry which culminated the finding of his dismissal and it is also settled principle of law that charge-sheet cannot be challenged. To support this view reference can -be made to **Laxman Singh Gurjar Versus Rajasthan State Road Transport Corporation etc. SB Civil Writ Petition No. 6611 of 2011** wherein it has been held that in the considered opinion of this court, a writ petition generally does not lie against the charge-sheet unless it is established that the same had been issued by an authority not competent to initiate the disciplinary proceedings. It is a settled law that charge-sheet cannot be interfered with by the court lightly or in a routine manner. The delinquent employee instead of seeking quashing of the charge-sheet at the initial stage must submit his/her reply before the Enquiry Officer/ Disciplinary Authority and wait for conclusion of the proceedings.

19. Since, in this case, the case has not been espoused by a registered trade union and case has also not been espoused by considerable section of workman having common cause with the individual workman. So it is held that there is no espousal of the case as was clear under Section 2k of the ID Act. In this regard, reliance is being placed on ***Ajay Kumar Vs. Sumitomo Mitsui Banking Corporation, (Delhi) reported as 2024 NCDHC 2184*** decided by Hon'ble Delhi High Court. In the said case, limited question for adjudication before the Court was that whether the learned CGIT rightly dismissed the dispute on grounds of non-espousal of the dispute or not. It was held by the Hon'ble Court, Tribunal's jurisdiction is contingent upon the existence of an industrial dispute and the jurisdiction of the Tribunal is tied to the presence of an industrial dispute. Therefore, the question of adjudication of the dispute does not arise if the Tribunal holds that the dispute raised by workmen is not an industrial dispute. Relevant paras of the judgment are reproduced hereunder:

"Para 27. As per the settled position of law, there are two methods for espousal (1) an industrial dispute, where the first method is raising of a dispute by a substantial number of employees of an establishment, and the second one is the espousal of an individual cause by a Union of the workmen.

Para 32. Upon perusal of the above cited paragraphs, it is made out that the learned CGIT emphasized the necessity of the dispute being sponsored or espoused through a Union of the workmen where it was noted that the Union plays a crucial role in adopting the dispute of individual workmen its own or garnering support from a large number of workmen for the cause.

Para 33. While adjudicating the issue of espousal, the learned CGIT referred to various judgments to define 'espousal', indicating that it entails the Union adopting the dispute of an individual workman as its own or gaining substantial support from fellow workmen for the said cause.

12. The dispute between an individual workman and the employer can be treated as an industrial dispute only where the workmen as a body or a considerable section of them, make common cause with the individual workman and espoused his demand.

Para 37. In light of the above cited judicial dicta, it is clear that the ***Tribunal's jurisdiction is contingent upon the existence of an industrial dispute as defined by the ID Act and the jurisdiction of the Tribunal is tied to the presence of an industrial dispute, which necessitates support from a Union or a substantial portion of the workforce****.*

Para 38. Furthermore, it is also clarified that ***if the Tribunal determines that there is no espousal of the dispute, it loses jurisdiction to adjudicate the matter, as it can only arbitrate industrial disputes.*** *Therefore, the question of adjudication of the dispute does not arise if the Tribunal holds that the dispute raised by workmen is not an industrial dispute.*

Para 44. In light of the above, the impugned award dated 10th February, 2017 passed in ID No.159/2011 by the Learned CGIT, New Delhi is hereby upheld and the present petition, being devoid of any merit is dismissed."

20. Keeping in view of the above discussions, it is held as follow:

i. The present dispute between workman and employer is individual dispute, not industrial dispute.

ii. Espousal of the claim/dispute of workman by association is not maintainable. It should have been espoused by Trade Union (Registered) or by appreciable number of employees.

iii. There is no community of interest involved in the dispute.

iv. There is jurisdictional error in sending the reference to the Tribunal without considering the fact that an individual dispute not involving community interest is not maintainable. The management can challenge the reference before the Tribunal after receipt of it, even if it has not challenged earlier before any competent Court.

v. There is finding against the workman in domestic enquiry culminating his dismissal and hence application under Section 33 read with Rule 60 of ID Act is maintainable during the pendency of reference, however, reference is not maintainable having jurisdictional error.

21. Thus application is allowed and reference is rejected being not maintainable.

22. Copy of above be sent to the Central Government for publication as required under Section 17(1) of the ID Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रक्षा मंत्रालय महानिदेशक, गुणवत्ता आश्वासन, नई दिल्ली के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़-II** के पंचाट (36/2020) प्रकाशित करती है।

[सं. एल - 41011/8/2000- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 14th February, 2025

S.O. 219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2020) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Ministry of Defence Director General of Quality Assurance New Delhi and their workmen.

[No. L-14011/8/2020- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH (PRESIDED OVER BY MR. KAMAL KANT).

ID No. 36/2020

Registered on 13.08.2020

1. Mange Ram son of Late Sh. Telu Ram, R/o C-4/3, CQA (I) Estate, Ladpur, Raipur, Dehradun and office bearer of Defence Instruments Employees' Union.
2. Shri Rakesh Sharma son of Late Shri S. D. Sharma, Resident of C-3/7, CQA (I) Estate, Ladpur, Raipur, Dehradun and member of Defence instruments Employees' Union.

----Claimant/Workmen

Versus

1. The Management – Ministry of Defence through Director General of Quality Assurance, Department of Defence Production, Ministry of Defence, Government of India, H Block, DHQ PO, New Delhi-110011.
2. The Controller, CQA (I), Raipur, Dehradun.

----Respondents/Employer

Award : 14.11.2024

Present: Sh. Anshul Mangla, Ld. Counsel for Workmen Union.

Sh. Mukesh Kaushik, Ld. Counsel for Management.

Central Government vide notification no.L-14011/8/2020 (IR(DU)) dated 17.07.2020, under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (hereinafter called as the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

"***Whether the management of CQA(I), Dehradun was justified in posting out the members of the union/office bearers of the Defence Instruments Employees' Union on promotion to far off places as raised by Defence Instruments Employees' Union vide letter dated 06.01.2020? If not, what relief the workers are entitled to and what other directions, if any, are necessary in the matter in the given circumstances?"***

1. Today the matter was fixed for filing evidence by way of affidavit of workman. However, ld. counsel for workmen union stated that one of the workmen namely Sh. Rakesh Kumar has passed away and his legal representatives and the other workman Shri Mange Ram is not interested in pursuing the matter and wishes to withdraw the matter. Sh. Mukesh Kaushik filed authority letter on behalf of the management today. Ld. Counsel for the management also gave no objection statement if the case is withdrawn by the workmen union.

2. In such circumstances, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference for the non-prosecution of the workmen.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मिधानि** के प्रबंधतंत्र के संबद्ध नियोजकों और **मिधानि मज़दूर संघ** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.- 14/2024)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2025- आई आर (एम)-9]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 220.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 14/2024)** of the **Central Government Industrial Tribunal cum Labour Court, Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Midhani** and **Midhani Mazdoor Sangh** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. Z-16025/04/2025- IR (M)-9]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 22nd day of January, 2025

INDUSTRIAL DISPUTE No. 14/2024

Between:

The General Secretary,

Midhani Mazdoor Sangh Midhani,

Kanchanbagh, Hyderabad,

Telangana-500058.

.....Petitioner

AND

The General Manager (HR),

Midhani, Kanchanbagh,

Hyderabad-500058. **…Respondents**

Appearances:

For the Petitioner : None

For the Respondent: V. Uma Devi, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.8/10/2024-B1 dated 08.03.2024 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Midhani, and their workmen. The reference is,

SCHEDULE

Whether the action of the management of MIDHANI, Kanchanbagh, Hyderabad denying to formulate procedure or policy to restrict the number of office bearers of recognized union and facilities to be availed by them is justified or not? If not, what relief the union is entitled to?

The reference is numbered in this Tribunal as I.D. No 14/2024 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. Therefore, in absence of Petitioner and non-filing of claim statement by the Petitioner, the case is 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 22nd day of January, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 14 फरवरी, 2025

का.आ. 221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **इंडियन बैंक** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री हरीश चन्द्र कलाल** के बीच अनुबंध में निर्दिष्ट **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर, पंचाट (रिफरेन्स न.- 03/2014)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2025- आई आर (एम)-2]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 221.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 03/2014)** of the **Industrial Tribunal cum Labour Court, Udaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Indian Bank** and **Shri Harish Chandra Kalal** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. Z-16025/04/2025- IR (M)-2]

DILIP KUMAR, Under Secy.

अनुलग्नक

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी —— सुशील कुमार जैन (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 03/2014 ITR

हरीश चन्द्र कलाल पिता श्री माधु कलाल उम्र वयस्क, निवासी घाटी दरवाजा बाहर, ऋषभदेव, जिला उदयपुर(राज.) ——**प्रार्थी**

विरूद्ध

1. शाखा प्रबंधक इंडियन बैंक शाखा ऋषभदेव जिला उदयपुर (राज.)
2. मुख्य प्रबंधक इंडियन बैंक, मंडलीय कार्यालय, जीवन निधि, भवानी सिंह रोड, एल आई सी बिल्डिंग, जयपुर (राज) ——**विपक्षीगण**

उपस्थितः—

प्रार्थी की और से : —श्री कमल कृपलानी, श्री छगन लाल कटारा अधिवक्ता।

विपक्षीगण की और से : —श्री संजय कोठारी, श्री अशोक कोठारी अधिवक्ता।

प्रार्थना पत्र अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम

:: पंचाट ::

दिनांक—27.12.2024

प्रार्थी की ओर से क्लेम इस आशय का प्रस्तुत किया गया है कि प्रार्थी को विपक्षीगण द्वारा वर्ष 1996 में सफाई कर्मचारी के कार्य हेतु शाखा ऋषभदेव में नियुक्त किया गया। प्रार्थी को उस समय 900/—मासिक वेतन दिया जाता था। प्रार्थी ने 1996 से अगस्त, 2011 तक ऋषभदेव शाखा में निरंतर कार्य किया। इस दौरान प्रार्थी ने सफाई कर्मचारी, चपरासी एवं सहायक का कार्य किया। प्रार्थी ने विपक्षी संख्या—1 के यहां खाते खोलने, लॉकर इश्यु करने आदि के कार्य भी किये। प्रार्थी ने कई मर्तबा केशियर का काम भी किया। प्रार्थी को सफाई कर्मचारी एवं सहायक कार्य हेतु 3200/—रूपये मासिक वेतन शाखा प्रबंधक द्वारा दिया जाता था। प्रार्थी को उसके कार्यों के लिये दिनांक 22.08.09 को प्रमाणपत्र भी जारी किया गया। प्रार्थी ने वर्ष 1996 से 15 वर्षों तक प्रत्येक कैलेण्डर वर्ष में 240 दिन से अधिक कार्य विपक्षीगण के यहां किया। इस दौरान 22 शाखा प्रबंधक रहे। प्रार्थी को शाखा प्रबंधक ने चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्ति दी, तब से प्रार्थी लगातार ऋषभदेव शाखा में कार्य करता आ रहा है। प्रार्थी से इस दरम्यान कम्प्यूटर आदि के कार्यो हेतु भी सहयोग लिया जाता रहा। प्रार्थी ने जब—जब स्थाई नियुक्ति के लिये आवेदन किया, तब हर बार प्रार्थी के आवेदन को किन्ही कारणों से रोक दिया जाता था और हर बार आश्वासन दिया जाता था कि एक दिन स्थाई नियुक्ति दे दी जावेगी। प्रार्थी जब दिनांक 01.09.2011 को रोज की तरह बैंक में पहुंचा तो विपक्षी संख्या—1 के शाखा प्रबंधक कुंज बिहारी मीणा ने प्रार्थी को कहा कि आज से आपको काम पर नहीं लिया जावेगा। इस बाबत प्रार्थी को कोई लिखित आदेश नहीं दिया गया और न कोई कारण ही बताया गया। प्रार्थी को कार्य से मुक्त किये जाने का कोई नोटिस नहीं दिया गया और न नोटिस के एवज में प्रार्थी को वेतन दिया गया। प्रार्थी के विरूद्व कोई अनुशासनात्मक एवं विभागीय कार्यवाही नहीं हुई और न कोई आरोप पत्र दिया गया है। प्रार्थी एवं विपक्षीगण के मध्य समझौता अधिकारी क्षैत्रीय श्रम आयुक्त(केन्द्रीय) अजमेर के समक्ष कोई सुलह नहीं हो सकी। इन आधारों पर प्रार्थी ने उसको पुनः सेवा में लिया जाकर प्रार्थी को स्थाई कर्मचारी के पद पर निरंतर सेवा में रखे जाने और दिनांक 1.9.2011 से समस्त आर्थिक लाभ नियमानुसार दिलाये जाने का निवेदन किया है।

विपक्षीगण ने अपने जवाब दिनांक 14.10.2015 में प्रारंभिक आपतियां लेते हुए लिखा है कि विपक्षीगण इलाहाबाद बैंक एक राष्ट्रीयकृत बैंक है जो कि केन्द्र सरकार का उपक्रम है जबकि श्रम न्यायालय एवं औधोगिक विवाद अधिकरण, उदयपुर का गठन राज्य सरकार द्वारा किया गया है और इसको केन्द्र सरकार द्वारा केन्द्रीय औधोगिक विवाद अधिकरण के रूप में

स्पेसीफाई नहीं किया गया हैं। अतः इस न्यायालय को प्रार्थी द्वारा मांगा गया अनुतोष प्रदान करने का श्रवणाधिकार/क्षैत्राधिकार प्राप्त नहीं है। इलाहाबाद बैंक को पक्षकार नहीं बनाया गया है। प्रार्थी को कभी भी इलाहाबाद बैंक द्वारा कोई नियुक्ति पत्र जारी नहीं किया गया है और न ही प्रार्थी ने विपक्षीगण के यहां किसी तरह का कार्य किया है। इसलिये प्रार्थी का प्रार्थनापत्र प्रथमदृष्टया पोषणीय नहीं है इसलिये इन्हीं आधारों पर प्रार्थी का आवेदन निरस्त किये जाने का निवेदन किया गया है।

विपक्षीगण की ओर से अपने जबाव में लिखा गया है कि विपक्षी ने प्रार्थी को कभी भी बैंक की सेवा में किसी पद पर नियुक्त नहीं किया, न ही प्रतिमाह कोई वेतन दिया गया है। इस बाबत प्रार्थी नियुक्ति प्रमाणपत्र पेश करे। बैंक में सभी प्रकार की नियुक्तियां केवल नियमानुसार भर्ती प्रकिया अपनाई जाकर ही की जाती है। प्रार्थी ने यह अंकित नहीं किया है कि उसको प्रमाणपत्र बैंक के किस व्यक्ति द्वारा जारी किया गया और न ही ऐसे किसी प्रमाणपत्र की प्रति प्रार्थनापत्र के साथ विपक्षीगण को भिजवाई गई। प्रार्थी को चतुर्थ श्रेणी कर्मचारी के पद पर कभी नियुक्ति नहीं दी गई। बैंक अभिलेख के अनुसार प्रार्थी को कभी कोई नियुक्ति पत्र जारी नहीं किया गया। किसी प्रकार के फोटो पेश किये जाने मात्र से प्रार्थी की कोई नियुक्ति होने का तथ्य प्रमाणित नहीं होता है। प्रार्थी जब विपक्षीगण के यहां कार्यरत ही नहीं रहा तो उसे सेवापृथक किये जाने का प्रश्न हीं नही रहता है। प्रार्थी द्वारा वर्ष 1996 से 31.08.2011 तक सेवाएं देने का तथ्य गलत है। प्रार्थी ने कभी विपक्षीगण के यहां उपस्थित होकर कोई निवेदन नहीं किया। अपने विशेष कथन में लिखा है कि विपक्षी बैंक में शाखा प्रबंधक को किसी भी पद पर नियुक्ति करने का अधिकार प्रदान नहीं है। इन आधारों पर विपक्षीगण ने प्रार्थी के आवेदन को खारिज किये जाने का निवेदन किया है।

प्रार्थी साक्ष्य में प्रार्थी हरीश चन्द्र ने अपने मौखिक कथन बतौर ए.ड.1, रामशंकर ए.ड.2 व कमलेश कलाल के बयान बतौर ए.ड.3 करवाकर अपनी साक्ष्य समाप्त की। प्रार्थी की ओर से प्रदर्श.1 लगायत प्रदर्श 5 ए दस्तावेज पेश कर प्रदर्शित करवाये गये।

विपक्षीगण बैंक द्वारा एन ए ड.1 आयुष अग्रवाल के बयान करवाकर साक्ष्य समाप्त की गई। विपक्षीगण की ओर से सिविल अपील नम्बर 1283/2002 रेंज फोरेस्ट ऑफिसर बनाम एस टी हाडीमनी निर्णय दिनांक 15.2.2002 की प्रति पेश की गई है।

इस प्रकरण में मुख्य रूप से निम्न बिन्दु निर्णीत करना है–

1. क्या प्रार्थी हरीशचन्द्र विपक्षीगण इंडियन बैंक का नियमित रूप से नियुक्त कर्मचारी हैध् यदि हॉ, तो क्या प्रार्थी हरीश चन्द्र को विपक्षी बैंक द्वारा दिनांक 01.09.2011 को नियम विरूद्व तरीके से सेवा पृथक कर दिया गया है और इस कारण प्रार्थी विपक्षीगण बैंक से दिनांक 01.09.2011 के बाद से उसको सेवा में रहते हुए मिलने वाले समस्त लाभ व पुनः नियुक्ति प्राप्त करने का अधिकारी है?

<u>बिन्दु संख्या–1</u>

इस बिन्दु के संबंध में उभयपक्ष की बहस सुनी। उभयपक्ष ने मूलरूप से अपने अभिवचनों के तथ्यों की पुनरावृति की है इसलिये तथ्यों व तर्कों की पुनरावृति की औपचारिकता कर अनावश्यक समय की बर्बादी नहीं की जा रही हैं।

इस बाबत प्रार्थी ने अपने मुख्य परीक्षण में अपने प्रार्थनापत्र में वर्णित तथ्यों की पुनरावृति की है जिन्हे दोहराने की औपचारिकता कर अनावश्यक रूप से समय की बर्बादी नहीं की जा रही है इसलिये उन तथ्यों को नहीं दोहराया जा रहा है। प्रार्थी हरीश चन्द्र ने अपने प्रतिपरीक्षण में कथन किया है कि यह सही है कि मैने न्यायालय में नियुक्ति पत्र पेश नहीं किया है अजखुद कहा कि मैं सफाई कर्मचारी था। मैने मेरी वेतन पर्ची पेश नहीं की है। मेरे को बैंक ने वेतन पर्ची व नियुक्ति पत्र नहीं देने के संदर्भ में मैने कोई पत्र नहीं लिखा। यह कहना सही है कि प्रदर्श.3 पत्र मैने ही न्यायालय में पेश किया है। यह सही है कि इस प्रदर्श.3 में मांगे गये कागजात आज तक ना तो बैंक में और ना ही न्यायालय में पेश किये है। प्रदर्श 5ए बैंक के लेटर हेड पर नहीं है फोटो कॉपी है। प्रदर्श 5ए पर बैंक के डिस्पेच नम्बर भी अंकित नहीं है। असल मेरे पास नहीं है इसलिये मैं पेश नहीं कर सकता। मैने जो दस्तावेज पेश कर दिये उनके अलावा कोई दस्तावेज आज पेश करने की स्थिति में नहीं हूॅ। यह सही है कि उक्त बैंक एक राष्ट्रीयकृत बैंक है जिसकी चयन व नियुक्ति की एक प्रकिया होती है। मैने नियुक्ति के पहले नियुक्ति बाबत कोई आवेदन नहीं किया, साक्षात्कार नहीं हुआ तथा मुझे नियुक्ति पत्र भी नहीं दिया स्वतः कहा कि मै अस्थाई सफाईकर्मी था जिसमें इस तरह की प्रकिया नहीं अपनाई जाती है। कई बार स्थाई करने के बारे में बैंक में बोला तो कहा गया कि जब वैकेंसी आयेगी तब स्थाई कर देंगे। इससे सम्बन्धित कोई पत्र मेरे पास नहीं है।

इस बाबत ए.ड.2 रामशंकर ने अपने शपथपत्र में लिखा है कि वह हरीशचन्द्र को 25–30 सालों से जानता है, अक्सर बैंक में आने जाने के कारण वह प्रार्थी को जानता है। प्रार्थी ने 1996 से वर्ष 2011 तक इलाहाबाद बैंक शाखा ऋषभदेव, उदयपुर में सफाई कर्मचारी, चपरासी, सहायक कार्य को किया तथा अन्य कार्य भी किये। प्रार्थी द्वारा केश काउंटर पर नकद लेन–देन का काम भी किया जाता रहा है। गवाह ने अपने प्रतिपरीक्षण में कथन किया है कि आज मैं हरिश के कहने से बयान देने आया हूॅ। हरिश ने अभी किराणे की दुकान कर रखी है। मैने अपने शपथपत्र की सारी बाते पढी है लेकिन इबारत क्या है याद नही। मैने हरिश का नियुक्ति पत्र नहीं देखा मैने हरिश को बैंक में काम करते हुए देखा है।

इस बाबत ए.ड.3 कमलेश ने अपने शपथपत्र में मुख्य रूप से यही लिखा है कि वह विगत 20 वर्षो से प्रार्थी हरिशचन्द्र को जानता है। वह अक्सर बैंक जाने के कारण प्रार्थी को जानता है। प्रार्थी ने 1996 से वर्ष 2011 तक इलाहाबाद बैंक शाखा ऋषभदेव, उदयपुर में सफाई कर्मचारी, चपरासी, सहायक कार्य को किया तथा अन्य कार्य भी किये। प्रार्थी द्वारा केश काउंटर पर नकद लेन–देन का काम भी किया जाता रहा है। गवाह ने अपने प्रतिपरीक्षण में कथन किया है कि मैं हरिश को बैंक में

मिलने के अलावा हमारी जाति का होने के कारण जानता हूँ। दोनों ऋषभदेव के होने से मिलते रहते है। यह सही है कि मैने अपने शपथपत्र की कलम संख्या–1 में वर्णित पास–बुक की कॉपी न्यायालय में पेश नहीं की है।

इस बाबत एन ए ड.1 आयुष अग्रवाल ने अपने शपथपत्र में लिखा है कि वह इंडियन बैंक (जिसे पूर्व में इलाहाबाद बैंक के नाम से जाना जाता था) की ऋषभदेव केशरियाजी में शाखा प्रबंधक के पद पर तैनात होकर इस प्रकरण में विपक्षी बैंक की ओर से शपथपत्र प्रस्तुत कर रहा है। प्रार्थी हरिश को कभी भी इलाहाबाद बैंक(इंडियन बैंक) में किसी भी पद पर कोई नियुक्ति नहीं दी गई। प्रार्थी से विपक्षी बैंक द्वारा कोई काम नहीं लिया गया। प्रार्थी विपक्षी बैंक के नियमित नियोजन में नहीं रहा। प्रार्थी एवं विपक्षी बैंक के मध्य कर्मकार एवं नियोजक के सम्बन्ध कभी नहीं रहे। अपने प्रतिपरीक्षण में गवाह ने कथन किया कि वह 29.06.2024 से शाखा प्रबंधक के पद पर ऋषभदेव केसरियाजी में तैनात है। मैं जून, 2014 से इंडियन बैंक में अपनी सेवाऐं दे रहा हूँ। प्रदर्श 5ए पर मोहर हमारे बैंक की नहीं है, ब्रांच कोड अंकित नहीं होने से हमारे बैंक की नहीं है। शाखा में हरिश कलाल से सम्बन्धित रेकर्ड की छानबीन की लेकिन कोई रेकर्ड नहीं मिला। हम बैंक का दस साल का रेकार्ड संभालकर रखते है। गवाह ने इस तथ्य को सही होना माना है कि जबाव के अंतिम पृष्ठ पर जो बैंक की सील लगी है उस पर कोई कोड अंकित नहीं है, वह इसलिये अंकित नहीं है हि मंडल कार्यालय की सील है जिस पर कोड नंबर अंकित नहीं होते क्योकि बहुत सारी शाखाये होती है।

इस बाबत इतना लिख दिया जाना पर्याप्त है कि प्रार्थी की ओर से अपने प्रतिपरीक्षण में यह कथन किया गया है कि उक्त बैंक एक राष्ट्रीयकृत बैंक है जिसकी चयन व नियुक्ति की एक प्रक्रिया होती है। मैने नियुक्ति बाबत कोई आवेदन नहीं किया, साक्षात्कार नहीं हुआ तथा मुझे नियुक्ति पत्र भी नहीं दिया गया। हरीश चन्द्र ने अपने प्रतिपरीक्षण में कथन किया गया है कि मैने न्यायालय में नियुक्ति पत्र पेश नहीं किया है। मैने मेरी वेतन पर्ची पेश नहीं की है। मेरे को बैंक द्वारा वेतन पर्ची व नियुक्ति पत्र नहीं देने के संदर्भ में मैने कोई पत्र नहीं लिखा। यह कहना सही है कि प्रदर्श.3 पत्र मैने ही न्यायालय में पेश किया है। यह सही है कि इस प्रदर्श.3 में मांगे गये कागजात आज तक ना तो बैंक में और ना ही न्यायालय में पेश किये है। इस प्रकार स्वयं प्रार्थी की ओर से ही प्रस्तुत मौखिक एवं दस्तावेजी साक्ष्य से यह तथ्य साबित नहीं हो पाता है कि प्रार्थी को इलाहाबाद बैंक(इंडियन बैंक) द्वारा किसी पद पर कोई नियुक्ति दी जाने बाबत कोई नियुक्ति पत्र जारी किया गया हो और प्रार्थी को बैंक द्वारा किसी पद पर नियमित रूप से कोई नियुक्ति दी गई हो। यदि प्रार्थी को बैंक द्वारा अंशकालिन सफाई कर्मचारी के पद पर भी नियुक्त किया जाता तो इस बाबत प्रार्थी को किसी न किसी प्रकार का कोई आदेश तो दिया जाता लेकिन ऐसा कोई आदेश भी प्रार्थी की ओर से पेश नहीं किया गया है जिससे यह प्रकट होता हो कि प्रार्थी को अंशकालिक रूप से सफाई कर्मचारी के पद पर विपक्षी बैंक की ओर से रखा जाकर उसको इस कार्य हेतु भुगतान किया गया हो। प्रार्थी की ओर से प्रस्तुत गवाहान की ओर से ऐसे कोई पुख्ता कथन नहीं किये गये है जिससे यह निष्कर्ष निकाला जा सके कि प्रार्थी को बैंक द्वारा किसी प्रकार से कोई नियुक्ति किसी पद के लिये, यहां तक कि अंशकालिक सफाई कर्मचारी के पद के लिये, दी गई हो और बैंक द्वारा प्रार्थी को किसी प्रकार का भुगतान किया जाता हो। इस प्रकार जब प्रार्थी अपनी साक्ष्य से यह तथ्य साबित ही नहीं कर पाया है कि विपक्षी बैंक द्वारा उसको किसी प्रकार से कोई नियुक्ति दी गई और बैंक द्वारा उसको किसी कार्य के लिये कोई भुगतान किया गया तो फिर प्रार्थी को बैंक द्वारा दिनांक 1.9.2011 से सेवापृथक किये जाने का तथ्य कतई साबित नहीं हो पाया है। इस कारण प्रार्थी दिनांक 1.9.11 के बाद से प्रार्थी से किसी प्रकार के वेतन भत्ते या अन्य लाभ पाने का अधिकारी नहीं पाया जाता है और प्रार्थी द्वारा प्रस्तुत हस्तगत प्रार्थनापत्र अस्वीकार कर खारिज किये जाने योग्य पाया जाता है।

उक्त विवेचन के आधार पर पंचाट इस प्रकार पारित किया जाता है कि–

प्रार्थी हरिश चन्द्र विपक्षी बैंक का कभी भी नियमित रूप से नियुक्त कर्मचारी नहीं रहा है और प्रार्थी को विपक्षीगण की ओर से किसी प्रकार के कार्य के लिये कोई भुगतान किये जाने का तथ्य तथा प्रार्थी को दिनांक 1.9.2011 से विपक्षीगण की ओर से अवैध रूप से सेवापृथक किये जाने का भी साबित नहीं हो पाया है। इसलिये प्रार्थी, विपक्षीगण से किसी प्रकार की कोई राहत पाने का अधिकारी नहीं है और एतद्द्वारा प्रार्थी द्वारा प्रस्तुत हस्तगत क्लेम आधारहीन होने से अस्वीकार कर खारिज किया जाता है।

पंचाट प्रकाशनार्थ समुचित सरकार को भारत सरकार के समझौता अधिकारी क्षैत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर के द्वारा जारी प्रमाणपत्र दिनांक 09.01.2014 के क्रम में भेजा जावे।

(सुशील कुमार जैन)

पंचाट/निर्णय आज दिनांक 27.12.2024 को खुले न्यायालय में लिखाया जाकर सुनाया गया।

नई दिल्ली, 14 फरवरी, 2025

का.आ. 222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **जे. के. नेचुरल मार्बल लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री गोपालदास** के बीच अनुबंध में निर्दिष्ट **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर, पंचाट (रिफरेन्स न.- 05/2020)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2025- आई आर (एम)-3]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 222.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 05/2020)** of the **Industrial Tribunal cum Labour Court, Udaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **J.K. Natural Marble Limited** and **Shri Gopaldas** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. Z-16025/04/2025- IR (M)-3]

DILIP KUMAR, Under Secy.

अनुलग्नक

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी —— सुशील कुमार जैन (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 05/2020 ITR

गोपालदास पिता कालूदास वैष्णव, उम्र 57 वर्ष, निवासी चारभुजा मंदिर के पास, बडगॉव जिला उदयपुर (राज.)
——**प्रार्थी**

विरूद्ध

प्रबंधक अरोडाज जे.के. नेचुरल मार्बल, लिमिटेड, मोरवड, कार्यालय–107 स्टार हितावाला कैम्पस, न्यू ब्रिज के पास पुला, उदयपुर (राज.)
——**विपक्षी**

उपस्थितः–

प्रार्थी की और से :–श्री सुभाष श्रीमाली अधिवक्ता।

विपक्षी की और से :–श्री राजेन्द्र सिंह चौहान, अधिवक्ता।

प्रार्थना पत्र अन्तर्गत धारा 2ए औद्योगिक विवाद अधिनियम,1947

:: **पंचाट** ::

दिनांक–17.12.2024

भारत सरकार के श्रम एवं रोजगार विभाग की अधिसूचना दिनांक 27.02.2020 के जरिये उप मुख्य आयुक्त श्रम (केन्द्रीय) अहमदाबाद लिंक आफिसर अजमेर द्वारा निम्नांकित विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया–

> ''Whether the action of the Management of Arora's J.K. Natural Marbles Limited Udaipur in terminating the service of Shri Gopal Das S/O shri Kalu Das ji Vaishnav w.e.f. 13-11-2019 is legal & justified\ if not, what relief the concerned workman is entitled and from which date?**

उक्त आ"ाय का प्रसंग प्राप्त होने पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं सम्बन्धित पक्षकारान को नोटिस जारी किये गये। जिस पर प्रार्थी की और से क्लेम व विपक्षीगण की और से जबाब पेश किया गया ।

प्रार्थी की ओर से क्लेम प्रार्थनापत्र इस आशय का प्रस्तुत किया गया है कि प्रार्थी की नियुक्ति विपक्षी के नियोजन की माइंस मोरवड में इलेक्ट्रिशियन के पद पर दिनांक 16.10.2014 को 4000/–रूपये प्रतिमाह पर हुई। प्रार्थी की सेवा संतोषप्रद रहने के कारण समय–समय पर प्रार्थी के वेतन में बढोतरी की जाती रही और प्रार्थी का अंतिम वेतन 16,600/–रूपये प्रतिमाह था। दिनांक 01.09.2019 को वह डयूटी पर गया तो गेट बंद कर दिया गया और कहा कि आप त्यागपत्र दे दो। उसने जब त्यागपत्र देने से मना कर दिया तो निर्मल जी ने कहा कि आपको नौकरी से ऊपर के आदेश से निकाल दिया गया है। इस पर प्रार्थी ने श्रीमान सहायक श्रम आयुक्त(केन्द्रीय) अजमेर के यहां प्रार्थनापत्र पेश किया जिस पर विपक्षी ने समझौता कर प्रार्थी को नौकरी पर लेने की बात कही लेकिन प्रार्थी को नौकरी पर नहीं लिया गया और दिनांक 13.11.2019 को प्रार्थी को सेवा से पृथक करने बाबत नोटिस मिला। प्रार्थी को बिना कोई सूचना दिये, बिना कोई अनुशासनात्मक कार्यवाही किये, बिना क्षतिपूर्ति दिये सेवा से पृथक कर दिया गया जो सेवामुक्ति औधोगिक विवाद अधिनियम की धारा 25 एफ के विरूद्व होने से प्रार्थी की सेवामुक्ति अवैध एवं शून्य है। प्रार्थी के बाद वाले श्रमिक अभी भी विपक्षी नियोजन में कार्यरत है। प्रार्थी का अगस्त व सितम्बर 2019 का वेतन 16,600/–रूपये प्रतिमाह की दर से एवं वर्ष 2018, 2019 का बोनस भी बकाया है। प्रार्थी ने विपक्षी के नियोजन में प्रत्येक कैलेण्डर वर्ष में 240 दिन से भी अधिक समय तक अपनी सेवाऐं दी है। इन आधारों पर विपक्षी द्वारा प्रार्थी के सेवामुक्ति आदेश को अवैध घोषित कर प्रार्थी को दिनांक 01.09.2019 से निरन्तर सेवा में मानते हुए प्रार्थी को पुनः सेवा में निरंतर वेतन, वरियता एवं अन्य लाभों सहित पुनर्नियुक्ति का आदेश दिये जाने का निवेदन किया है।

विपक्षी की ओर से इसका जबाव पेश कर लिखा गया है कि प्रार्थी को विपक्षी संस्थान द्वारा दिनांक 16.10.2004 को नियोजन में लिया गया। प्रार्थी द्वारा अपने कार्य के दौरान कदाचरण कारित किये गये लेकिन विपक्षी संस्थान द्वारा प्रार्थी के प्रति नरम रूख अपनाते हुए कोई अनुशासनात्मक कार्यवाही नहीं की गई। प्रार्थी का स्थानांतरण कार्य की आवश्यकता को देखते हुए राजसमंद से मसारो की ओबरी, केसरियाजी में किया जाकर प्रार्थी को दिनांक 27.08.2019 को स्थानांतरण आदेश दिया

गया जिसको पढकर प्रार्थी ने लेने से इंकार कर दिया और प्रार्थी ने अगस्त, 2019 समाप्त होने के बाद से काम पर आना बंद कर दिया। प्रार्थी इसके बाद कभी कार्य पर उपस्थित नहीं हुआ। समझौता वार्ता में भी विपक्षी संस्थान द्वारा प्रार्थी को काम पर लेने की इच्छा जाहिर की गई और प्रार्थी के दिनांक 09.11.2019 को कार्य हेतु उपस्थित होने की बात तय हुई लेकिन प्रार्थी कभी उपस्थित नहीं हुआ। प्रार्थी को कार्य पर उपस्थित होने हेतु नोटिस प्रेषित किये गये जो प्रार्थी को समय पर प्राप्त हो गये लेकिन इसके उपरांत भी प्रार्थी उपस्थित नहीं हुआ, विपक्षी संस्थान द्वारा प्रार्थी को कार्य पर उपस्थित होने हेतु नोटिस प्रेषित किये गये जो प्रार्थी को समय पर प्राप्त हो गये लेकिन प्रार्थी ने फिर भी विपक्षी संस्थान में नियोजन पर उपस्थित होकर अपने कर्तव्य का पालन नहीं किया जिससे स्पष्ट है कि प्रार्थी को कार्य की कोई आवश्यकता नहीं है। इस कारण विपक्षी संस्थान द्वारा प्रार्थी की सेवाएं आदेश दिनांक 13.11.2019 के जरिये समाप्त कर दी गई। प्रार्थी का अंतिम वेतन 16,600/—रूपये था। प्रार्थी बोनस के बाबत बोनस भुगतान अधिनियम में राशि क्लेम कर सकता है। लेकिन प्रार्थी बोनस राशि प्राप्त करने हेतु eligible नहीं था। प्रार्थी द्वारा दिनांक 16.10.2004 से दिनांक 31.08.2019 तक विपक्षी संस्थान में निरंतर सेवाऐं नहीं दी गई। अपने विशेष उत्तर में भी विपक्षी की ओर से जबाव में अंकित तथ्यों को ही दोहराया गया है जिस कारण उन तथ्यों की पुनरावृति किये जाने की आवश्यकता प्रतीत नहीं होती है। विपक्षी ने यह भी लिखा है कि प्रार्थी को समझाइश कर प्रार्थी को कार्य पर उपस्थित होने हेतु निर्देशित करे। इन आधारों पर विपक्षी संस्थान ने प्रार्थी का क्लेम प्रार्थनापत्र खारिज किये जाने का निवेदन किया है।

प्रार्थी साक्ष्य में प्रार्थी श्रमिक गोपालदास ने बतौर ए.ड.1 अपने बयान करवाकर अपनी साक्ष्य समाप्त की। प्रार्थी की ओर से प्रदर्श.ए1 लगायत प्रदर्श. ए77 पेश कर प्रदर्शित करवाये गये। विपक्षी की ओर से अनुराग पांडे एन ए डब्ल्यु.1 के मौखिक कथन लेखबद्व करवाये गये तथा दस्तावेजी साक्ष्य में प्रदर्श एम.1 लगायत प्रदर्श एम.10 की प्रति पेश कर प्रदर्शित करवाई गई है।

अधिवक्ता विपक्षी की ओर से न्यायिक दृष्टांत 2005 0 Supreme(Raj) 1300 Maharaja Shree Umaid Mills Ltd v The Judge Labour Court & ors. S.B. Civil Writ Petition No. 4699/2001 पेश किया गया है।

इस प्रकरण में मुख्य रूप से निम्न बिन्दु निर्णीत करने है–

1. क्या प्रार्थी श्रमिक गोपालदास को विपक्षी संस्थान द्वारा 13.11.2019 को सेवामुक्त किया जाना उचित एवं न्यायसंगत है? यदि नहीं, तो प्रार्थी किस दिनांक से किस राहत को पाने का अधिकारी है?

बिन्दु संख्या–1

इस बिन्दु के संबंध में उभयपक्ष की बहस सुनी गई। बहस में उभयपक्ष ने मूलरूप से अपने अभिवचनों के तथ्यों की पुनरावृति की है इसलिये तथ्यों व तर्कों की पुनरावृति की औपचारिकता कर अनावश्यक समय की बर्बादी नहीं की जा रही हैं।

इस बाबत प्रार्थी ने अपने मुख्य परीक्षण के शपथपत्र में अपने प्रार्थनापत्र में वर्णित तथ्यों की पुनरावृति की है। जिन्हे दोहराने की औपचारिकता कर अनावश्यक रूप से समय की बर्बादी नहीं की जा रही है। प्रार्थी ने दौराने प्रतिपरीक्षण कथन किया है कि यह सही है कि भुगतान बैंक के जरिये होता था अजखुद कहा कि वर्ष 2014 से बैंक से होता था। बैंक से डायरेक्ट जमा होता था उससे पूर्व लिफाफे में देते थे। गवाह ने यह स्वीकार किया कि प्रदर्श एम.1 पर ए से बी मेरे हस्ताक्षर है तथा प्रदर्श एम.1 नियुक्ति का है। प्रदर्श एम.1 पर ए से बी मेरे ही अंग्रेजी में साइन है। नियुक्ति में वर्णित शर्तो के आधार पर मुझे नौकरी में रखा था। मैं अंग्रेजी नहीं जानता हूॅ। यह सही है कि प्रदर्श एम.1 पर मैने स्वेच्छा से साइन किया है। प्रदर्श एम. 3 मुझे नहीं मिला इस पर ए से बी साइन को मै पहचानता हूॅ। प्रदर्श एम.4 मेरे द्वारा भेजा गया जिस पर ए से बी मेरे हस्ताक्षर है। प्रदर्श एम.4 पर प्रदर्श एम.3 का हवाला है। प्रदर्श एम.5, 6,7 मुझे नहीं मिले। प्रदर्श एम.8 मिला था। प्रदर्श एम.5 से प्रदर्श एम.8 पर अनुराग पांडे के साइन है। प्रदर्श एम.9 मेरे द्वारा लिखा गया पत्र है जिस पर ए से बी मेरे साइन है। प्रदर्श एम.6 व 7 का प्रदर्श एम.9 में हवाला है। प्रदर्श ए.17 से प्रदर्श ए.77 हाजरी रजिस्टर व भुगतान पत्र है। यह सही है कि प्रदर्श ए.7 व प्रदर्शए.5 एक ही है। इसी तरह प्रदर्श एम.3 तथा प्रदर्श एम.6 व प्रदर्श एम.9 एक ही पत्र है। गवाह ने यह भी कथन किया कि संस्थान ने जबाव में कार्य पर उपस्थित होने का प्रस्ताव दिया था। अजखुद कहा कि मैं आदेशानुसार डयूटी पर गया तथा जी एम से मिला तो उन्होने कहा कि तुम्हे डयूटी पर नहीं लेंगे। एच आर से मिला तो उन्होने कहा कि तुम्हे टर्मिनेट कर दिया है।

इस बाबत एन ए ड.1 अनुराग पांडे ने अपने शपथपत्र में तो कमोबेश जबाव में अंकित तथ्यों की पुनरावृति ही की है जिस कारण अब उन तथ्यों को दोहराये जाने की आवश्यकता प्रतीत नहीं होती है। गवाह ने अपने प्रतिपरीक्षण में कथन किया है कि आज मुझे याद नहीं कि प्रार्थी द्वारा कौनसे कदाचरण कारित किये गये। हमने प्रार्थी के विरूद्व अनुशासनात्मक कार्यवाही नहीं की ऐसी शिकायत आने पर उसको बुलाकर बातचीत की जाती है। इस केस में प्रार्थी से सम्बन्धित शिकायते पेश नहीं की है। यह सही है कि प्रार्थी द्वारा सहायक श्रम आयुक्त केन्द्रीय के समक्ष की गई शिकायत बाबत हुई समझौता वार्ता में मैने प्रार्थी को डयूटी पर लेने की बात कही थी। यह सही है कि प्रार्थी को नोटिस देकर दिनांक 13.11.2019 को सेवा से पृथक कर दिया था क्योकि प्रार्थी डयूटी पर नहीं आ रहा था। यह सही है कि प्रार्थी ने दिनांक 22.11.2019 को सेवापृथक करने की शिकायत भी सहायक श्रम आयुक्त केन्द्रीय अजमेर को थी। यह सही है कि हमने प्रार्थी को राजसमंद से केसरियाजी में स्थानान्तरित किया था। इसकी सूचना प्रदर्श ए2. प्रार्थी को उसी समय बाई हेण्ड दी गई थी। यह सही है कि प्रदर्श एम.2 पर रसीद नहीं है क्योकि प्रार्थी ने लेने से इंकार कर दिया था। यह सही है कि प्रदर्श एम.2 पर प्रार्थी द्वारा मना किये जाने का मार्का नहीं है। यह सही है कि इस पर डिस्पेच नम्बर नहीं है क्योकि ऐसा रजिस्टर हमारे यहां नहीं है। प्रार्थी के द्वारा लेटर लेने से मना करने पर हमने उसे लिखित में कोई नोटिस नहीं दिया बल्कि उसे मौखिक रूप से कहा गया था। प्रदर्श एम.3,5,6,7,8 डाक से भेजा था इसकी रसीद पेश नही है। यह कहना सही है कि हमने गोपालदास की सितम्बर से दिसम्बर, 2019 की हाजरी पेश नहीं

की है जो मांगी नहीं इसलिये पेश नहीं की। यह सही है कि प्रार्थी के बाद उसकी जगह पर दूसरा मजदूर काम कर रहा है अजखुद कहा कि आज भी इनकी जगह खाली है। यह कहना सही है कि हमने प्रार्थी को निकालने के पहले नोटिस नहीं दिया। यह सही है कि प्रार्थी को क्षतिपूर्ति राशि नहीं दी। हमने प्रार्थी को प्रदर्श एम.8 निष्कासन पत्र दिया था। प्रार्थी वर्तमान में कहॉ काम करता है वह मैं नहीं बता सकता।

इस प्रकार जहां प्रार्थी विपक्षी द्वारा उसको बिना कोई कार्यवाही किये सेवापृथक किये जाने का कथन करता है वहीं विपक्षी का गवाह भी अपने प्रतिपरीक्षण में यह स्वीकार करता है कि उन्होने प्रार्थी के विरूद्व अनुशासनात्मक कार्यवाही नहीं की। इस केस में प्रार्थी से सम्बन्धित शिकायते पेश नहीं की। समझौता वार्ता के दौरान भी प्रार्थी को डयूटी पर लेने की बात कही थी। प्रार्थी को हमने नोटिस देकर दिनांक 13.11.2019 को सेवापृथक कर दिया क्योकि वह नौकरी पर नहीं आ रहा था। इस प्रकार जब विपक्षी स्वयं की ओर से यह स्वीकार किया गया है कि उनके द्वारा प्रार्थी के विरूद्व कोई अनुशासनात्मक कार्यवाही नहीं की गई, प्रार्थी के विरूद्व शिकायतें न्यायालय में पेश नहीं की गई और समझौता वार्ता के दौरान भी प्रार्थी को डयूटी पर लेने की बात कही थी। विपक्षी ने जबाव में यह भी लिखा है कि वे आज भी प्रार्थी को डयूटी पर लेने को तैयार है। विपक्षी के गवाह ने दौराने प्रतिपरीक्षण यह भी स्वीकार किया है कि प्रदर्श एम.2 पर डिस्पेच नम्बर नहीं है। गवाह ने यह भी स्वीकार किया है कि प्रार्थी को निकालने से पहले नोटिस नहीं दिया था। प्रार्थी को क्षतिपूर्ति राशि नहीं दी थी। प्रार्थी के बाद उसकी जगह पर दूसरा मजदूर काम कर रहा है अजखुद कहा कि आज भी इसकी जगह खाली है। इस प्रकार विपक्षी स्वयं की स्वीकारोक्ति से ही यह तथ्य स्पष्ट हो जाता है कि प्रार्थी के विरूद्व उनके द्वारा कोई अनुशासनात्मक कार्यवाही नहीं की गई और उसको किसी प्रकार से कोई दंड भी नहीं दिया गया तथा मात्र द्वारा नौकरी पर नहीं आने के कारण उसको सेवापृथक कर दिया गया है। किसी भी संस्थान में किसी भी कर्मचारी को सेवापृथक करने के लिये निर्धारित नियमों के अनुसार कार्यवाही करके ही किसी प्रार्थी को सेवापृथक किया जा सकता है लेकिन हस्तगत प्रकरण में न तो प्रार्थी के खिलाफ कोई अनुशासनात्मक कार्यवाही की गई और न ही किसी प्रकार की कोई जांच की जाकर प्रार्थी को दोषी पाये जाने पर उसको सेवापृथक किया गया है। इस प्रकार विपक्षी स्वयं की दौराने साक्ष्य की गई स्वीकारोक्तियों से ही यह तथ्य साबित हो जाता है कि विपक्षी द्वारा प्रार्थी को सेवापृथक किये जाने का आदेश अनुचित एवं अवैध है। विपक्षी की ओर से यह भी स्वीकार किया गया है कि प्रार्थी का पद आज भी खाली है। जब विपक्षी द्वारा प्रार्थी को अनुचित एवं अवैध रूप से सेवापृथक किया गया है तो प्रार्थी निश्चित रूप से उसको सेवापृथक किये जाने की दिनांक से सेवानिवृति की दिनांक तक उसको मिलने वाले समस्त लाभ, परिलाभ जो सेवा में रहते हुए मिलते, आदि प्राप्त करने का अधिकारी पाया जाता है।

इस बाबत अधिवक्ता विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टान्त के तथ्य हस्तगत प्रकरण के तथ्यों से भिन्न होने के कारण इससे विपक्षी को कोई लाभ नहीं मिल सकता है। क्यूकि न्यायिक दृष्टान्त वाले प्रकरण में विपक्षी नम्बर–2 द्वारा सब्जी की दुकान चलाये जाने का काम करना अपीलार्थी द्वारा बताया गया था लेकिन हस्तगत प्रकरण में विपक्षी की ओर से ऐसे कोई तथ्य नहीं बताये गये है कि विपक्षी कोई काम धंधा करके आय अर्जित करता हो जिस कारण वह कोई राशि पाने का अधिकारी नहीं हो।

हस्तगत प्रकरण में चूॅकि प्रार्थी ने दिनांक 01.09.2019 से अब तक वास्तव में विपक्षी के यहां अपनी सेवाऐं नहीं दी है। अतः प्रार्थी न्यायिक दृष्टान्त 1999 एल ए बी आई सी पेज 619 एम सी डी बनाम प्रवीण कुमार जैन व अन्य में प्रतिपादित सिद्वान्त के प्रकाश में दिनांक 01.09.2019 से सेवानिवृति की दिनांक तक के उसको सेवा में रहते हुए मिलने वाले समस्त वेतन, भत्तों व परिलाभों का 50 प्रतिशत हिस्सा प्राप्त करने का अधिकारी है। प्रार्थी को इस प्रकार मिलने वाली राशि पर नियमानुसार आयकर भुगतान के बाद ही प्रार्थी उक्त राशि प्राप्त करने का अधिकारी होगा।

उक्त विवेचन के आधार पर **पंचाट** इस प्रकार पारित किया जाता है कि–

प्रार्थी को विपक्षी द्वारा दिनांक 01.09.2019 से अवैध रूप से सेवापृथक कर दिया गया है। प्रार्थी को पुनः सेवा में बहाल करने और प्रार्थी को दिनांक 01.09.2019 से सेवानिवृति तक की अवधि में उनके सेवा में रहते हुए मिलने वाले वेतन, भत्ते आदि परिलाभ का 50 प्रतिशत हिस्सा दिलाया जाना न्यायसंगत पाया जाता है। प्रार्थी को इस प्रकार मिलने वाली समस्त राशि पर नियमानुसार आयकर कटौती के पश्चात् मिलने वाली राशि प्रार्थी विपक्षी से प्राप्त करने का अधिकारी होगा। विपक्षी, प्रार्थी को पुनः सेवा में बहाल करे और दिनांक 01.09.2019 से लेकर उसकी नियमानुसार सेवानिवृति की दिनांक तक देय समस्त वेतन, भत्तों परिलाभ की राशि का 50 प्रतिशत अदा करे।

पंचाट प्रकाशनार्थ भारत सरकार के श्रम एवं रोजगार विभाग की अधिसूचना दिनांक 27.02.2020 के तहत उप मुख्य आयुक्त श्रम (केन्द्रीय) अहमदाबाद लिंक आफिसर अजमेर को भेजा जावे।

(सुशील कुमार जैन)

पंचाट/निर्णय आज दिनांक 17.12.2024 को खुले न्यायालय में लिखाया जाकर सुनाया गया।

नई दिल्ली, 14 फरवरी, 2025

का.आ. 223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **जे. के. नेचुरल मार्बल लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री बाबू सिंह** के बीच अनुबंध में निर्दिष्ट **औद्योगिक अधिकरण एवं श्रम न्यायालय, उदयपुर, पंचाट (रिफरेन्स न.- 04/2020)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2025- आई आर (एम)-4]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 223.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 04/2020)** of the **Industrial Tribunal cum Labour Court, Udaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **J.K. Natural Marble Limited** and **Shri Babu Singh** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. Z-16025/04/2025- IR (M)-4]

DILIP KUMAR, Under Secy.

अनुलग्नक

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राजस्थान)

पीठासीन अधिकारी —— सुशील कुमार जैन (जिला न्यायाधीश संवर्ग)

प्रकरण संख्या 04/2020 ITR

बाबू सिंह पिता केसर सिंह चुण्डावत, उम्र 44 वर्ष, निवासी बाहरी भाग पाखंड, तहसील नाथद्वारा जिला राजसमंद (राज.) ——**प्रार्थी**

विरूद्ध

प्रबंधक अरोडाज जे.के. नेचुरल मार्बल, लिमिटेड, मोरवड, कार्यालय–107 स्टार हितावाला कैम्पस, न्यू ब्रिज के पास पुला, उदयपुर (राज.) ——**विपक्षी**

उपस्थितः–

प्रार्थी की और से :–श्री सुभाष श्रीमाली अधिवक्ता।

विपक्षी की और से :–श्री राजेन्द्र सिंह चौहान, अधिवक्ता।

प्रार्थना पत्र अन्तर्गत धारा 2ए औद्योगिक विवाद अधिनियम,1947

:: **पंचाट** ::

दिनांक– 17.12.2024

भारत सरकार के श्रम एवं रोजगार विभाग की अधिसूचना दिनांक 27.02.2020 के जरिये उप मुख्य आयुक्त श्रम (केन्द्रीय) अहमदाबाद लिंक आफिसर अजमेर द्वारा निम्नांकित विवाद इस न्यायालय को अधिनिर्णयार्थ प्रेषित किया गया–

> ''Whether the action of the Management of Arora's J.K. Natural Marbles Limited Udaipur in terminating the services of Shri Babu Singh ChundavatS/O shri Kesar Singh w.e.f. 12-12-2019 is legal & justified\ if not, what relief the concerned workman is entitled and from which date?**

उक्त आ"ाय का प्रसंग प्राप्त होने पर न्यायालय द्वारा प्रकरण दर्ज रजिस्टर किया गया एवं सम्बन्धित पक्षकारान को नोटिस जारी किये गये। जिस पर प्रार्थी की और से क्लेम व विपक्षीगण की और से जबाब पेश किया गया ।

प्रार्थी की ओर से क्लेम प्रार्थनापत्र इस आशय का प्रस्तुत किया गया है कि प्रार्थी की नियुक्ति विपक्षी के नियोजन की माइंस मोरवड में हाइड्रा ऑपरेटर के पद पर दिनांक 01.01.2007 को 4000/–रूपये प्रतिमाह पर हुई। प्रार्थी की सेवा संतोषप्रद रहने के कारण समय–समय पर प्रार्थी के वेतन में बढोतरी की जाती रही और प्रार्थी का अंतिम वेतन 14,000/–रूपये प्रतिमाह था। दिनांक 11.09.2019 को वह डयूटी पर गया तो गेट बंद कर दिया गया और कहा कि आप त्यागपत्र दे दो। उसने जब त्यागपत्र देने से मना कर दिया तो निर्मल जी ने कहा कि आपको नौकरी से ऊपर के आदेश से निकाल दिया गया है। इस पर प्रार्थी ने श्रीमान सहायक श्रम आयुक्त(केन्द्रीय) अजमेर के यहां प्रार्थनापत्र पेश किया जिस पर विपक्षी ने समझौता कर प्रार्थी को नौकरी पर लेने की बात कही लेकिन प्रार्थी को नौकरी पर नहीं लिया गया और दिनांक 12.12.2019 को प्रार्थी को सेवा से पृथक करने बाबत नोटिस मिला। प्रार्थी को बिना कोई सूचना दिये, बिना कोई अनुशासनात्मक कार्यवाही किये, बिना क्षतिपूर्ति दिये सेवा से पृथक कर दिया गया जो सेवामुक्ति औधोगिक विवाद अधिनियम की धारा 25 एफ के विरूद्व होने से प्रार्थी की सेवामुक्ति अवैध एवं शून्य है। प्रार्थी के बाद वाले श्रमिक अभी भी विपक्षी नियोजन में कार्यरत है जिससे फर्स्ट कम लास्ट गो वाले सिद्वांत के विरूद्व होने से प्रार्थी की सेवामुक्ति अवैध एवं शून्य है। प्रार्थी ने विपक्षी के नियोजन में प्रत्येक कैलेण्डर वर्ष में 240 दिन से भी अधिक समय तक अपनी सेवाऐं दी है। इस प्रकार प्रार्थी को बिना विधिक प्रक्रिया अपनाये सेवा से पृथक कर दिया गया है जिस कारण प्रार्थी की सेवामुक्ति अवैध एवं शून्य है। इन आधारों पर विपक्षी द्वारा जारी प्रार्थी के सेवामुक्ति आदेश दिनांक 12.12.09 को अवैध घोषित कर प्रार्थी को दिनांक 01.09.2019 से निरन्तर सेवा में मानते हुए प्रार्थी को पुनः सेवा में निरंतर वेतन, वरियता एवं अन्य लाभों सहित पुनर्नियुक्ति का आदेश दिये जाने का निवेदन किया है।

विपक्षी की ओर से इसका जबाव पेश कर लिखा है कि प्रार्थी को विपक्षी संस्थान द्वारा दिनांक 01.01.2007 से नियोजन में नहीं लिया गया बल्कि प्रार्थी दिनांक 08.08.2007 से विपक्षी संस्थान में बतौर हाइड्रा ऑपरेटर कार्यरत रहा है। प्रार्थी

का मासिक वेतन 4000/–रूपये था। प्रार्थी का अंतिम वेतन 14,000/–रूपये मासिक नहीं होकर 13,855/–रूपये मासिक था। प्रार्थी द्वारा अपने कार्य के दौरान कदाचरण कारित किये गये लेकिन विपक्षी संस्थान द्वारा प्रार्थी के प्रति नरम रूख अपनाते हुए कोई अनुशासनात्मक कार्यवाही नहीं की गई। प्रार्थी की जानकारी में यह तथ्य आ गया था कि उसका स्थानांतरण कार्य की आवश्यकता को देखते हुए राजसमंद से मसारो की ओबरी, केसरियाजी में किया जाना है। विपक्षी संस्थान द्वारा प्रार्थी को दिनांक 27.08.2019 को स्थानांतरण आदेश दिया गया जिसको पढकर प्रार्थी ने लेने से इंकार कर दिया। प्रार्थी ने दिनांक 11.09.2019 से ही कार्य पर आना बंद कर दिया। प्रार्थी इसके बाद कभी कार्य पर उपस्थित नहीं हुआ। समझौता वार्ता में भी विपक्षी संस्थान द्वारा प्रार्थी को काम पर लेने की इच्छा जाहिर की गई और कहा गया कि प्रार्थी यदि काम करना चाहते तो विपक्षी संस्थान प्रार्थी को समान पद पर कार्य पर लेने को तैयार है और प्रार्थी चाहे तो कल से ही अपने कार्य पर उपस्थित हो सकता है। प्रार्थी के दिनांक 13.11.2019 को कार्य हेतु उपस्थित होने की बात तय हुई लेकिन प्रार्थी इसके पश्चात् कभी विपक्षी संस्थान में उपस्थित नहीं हुआ। प्रार्थी को कार्य पर उपस्थित होने हेतु नोटिस प्रेषित किये गये जो प्रार्थी को समय पर प्राप्त हो गये लेकिन इसके उपरांत भी प्रार्थी उपस्थित नहीं हुआ जिससे स्पष्ट है कि प्रार्थी को कार्य की कोई आवश्यकता नहीं है। इस कारण विपक्षी संस्थान द्वारा प्रार्थी की सेवाएं आदेश दिनांक 12.12.2019 से समाप्त कर दी गई। प्रार्थी द्वारा विपक्षी संस्थान में प्रत्येक कैलेण्डर वर्ष में 240 दिवस से अधिक कार्य नहीं किया गया। विपक्षी संस्थान द्वारा प्रार्थी की अवैधानिक अनुपस्थिति के संदर्भ में बार–बार नोटिस दिये गये परंतु प्रार्थी उपस्थित नहीं हुआ जिस कारण प्रार्थी को सेवामुक्त किया गया। अपने विशेष उत्तर में भी विपक्षी की ओर से जबाव में अंकित तथ्यों को ही दोहराया गया है जिस कारण उन तथ्यों की पुनरावृति किये जाने की आवश्यकता प्रतीत नहीं होती है। विपक्षी ने यह भी लिखा है कि प्रार्थी को समझाइश कर प्रार्थी को कार्य पर उपस्थित होने हेतु निर्देशित करे। इन आधारों पर विपक्षी संस्थान ने प्रार्थी का क्लेम प्रार्थनापत्र खारिज किये जाने का निवेदन किया है।

प्रार्थी साक्ष्य में प्रार्थी श्रमिक बाबू सिंह ने बतौर ए.ड.1 अपने बयान करवाकर अपनी साक्ष्य समाप्त की। प्रार्थी की ओर से प्रदर्श.1 लगायत प्रदर्श. 7 पेश कर प्रदर्शित करवाये गये। विपक्षी की ओर से अनुराग पांडे एन ए डब्ल्यु.1 के मौखिक कथन लेखबद्व करवाये गये तथा दस्तावेजी साक्ष्य में प्रदर्श एम.1 लगायत प्रदर्श एम.21 की प्रति पेश कर प्रदर्शित करवाई गई है।

अधिवक्ता विपक्षी की ओर से न्यायिक दृष्टांत 2005 0 Supreme(Raj) 1300 Maharaja Shree Umaid Mills Ltd v The Judge Labour Court & ors. S.B. Civil Writ Petition No. 4699/2001 पेश किया गया है।

इस प्रकरण में मुख्य रूप से निम्न बिन्दु निर्णीत करने है–

1. क्या प्रार्थी श्रमिक बाबू सिंह को विपक्षी संस्थान द्वारा 12.12.2019 को सेवामुक्त किया जाना उचित एवं न्यायसंगत है? यदि नहीं, तो प्रार्थी किस दिनांक से किस राहत को पाने का अधिकारी है?

बिन्दु संख्या–1

इस बिन्दु के संबंध में उभयपक्ष की बहस सुनी गई। बहस में उभयपक्ष ने मूलरूप से अपने अभिवचनों के तथ्यों की पुनरावृति की है इसलिये तथ्यों व तर्कों की पुनरावृति की औपचारिकता कर अनावश्यक समय की बर्बादी नहीं की जा रही हैं।

इस बाबत प्रार्थी ने अपने मुख्य परीक्षण के शपथपत्र में अपने प्रार्थनापत्र में वर्णित तथ्यों की पुनरावृति की है। जिन्हे दोहराने की औपचारिकता कर अनावश्यक रूप से समय की बर्बादी नहीं की जा रही है। प्रार्थी ने दौराने प्रतिपरीक्षण कथन किया है कि यह सही है कि मेरे पास दिनांक 01.01.2007 को नियुक्ति होने के सम्बन्ध में कोई दस्तावेज तथा नियुक्ति पत्र नहीं है। मेरे को भुगतान बैंक के द्वारा होता था। यह मेरे को पता नहीं कि दिनांक 06.01.2020 को 11,799/–रूपये का भुगतान जरिये चैक प्राप्त हुआ हो जो प्रदर्श एम.1 के ए से बी भाग में अंकित हो। यह मेरी जानकारी में नही आया था कि मेरा स्थानांतरण माईन्स में कर दिया हो। यह गलत है कि प्रदर्श एम.2 स्थानांतरण आदेश मेरे को दिया हो जिसे मैने पढकर लेने से इंकार कर दिया हो। प्रदर्श एम.3 पत्र मेरे को प्राप्त नहीं हुआ था। प्रदर्श एम.4 पर ए से बी स्थान पर मेरे हस्ताक्षर है। प्रदर्श एम.4 की मेरे को जानकारी है। यह सही है कि प्रदर्श एम.4 20.09.2019 के प्रबंधन के सदंर्भ में है। प्रदर्श एम.5, 6 व 7 मेरे को नहीं मिले। इनकी मुझे कोई जानकारी नहीं है। प्रदर्श एम.8 पर ए से बी मेरे हस्ताक्षर है जो मेरे द्वारा लिखवाई गई थी जब हिरणमगरी में शिकायत करते वक्त लिखवाया था। प्रदर्श एम.9 मेरे को प्राप्त हुआ जिसकी जानकारी मुझे है। मैं दिनांक 13.11.2019 को काम पर गया था उस दिन मेरी हाजरी लगी थी जिसका मेरे को कोई भुगतान नहीं किया। यह सही है कि प्रदर्श 5 मैने विपक्षी को को भेजा उसकी पावती या पोस्टल रसीद नहीं है। प्रार्थी की उपस्थिति शीट अप्रैल 2015 से नवम्बर, 2019 तक प्रदर्श एम.10 लगायत प्रदर्श एम.20 तथा भुगतान की शीट प्रदर्श एम.21 है जो 51 पृष्ठो में है।

इस बाबत एन ए ड.1 अनुराग पांडे ने अपने शपथपत्र में तो कमोबेश जबाव में अंकित तथ्यों की पुनरावृति ही की है जिस कारण अब उन तथ्यों को दोहराये जाने की आवश्यकता प्रतीत नहीं होती है। गवाह ने अपने प्रतिपरीक्षण में कथन किया है कि आज मुझे याद नहीं कि प्रार्थी द्वारा कौनसे कदाचरण कारित किये गये। हमने प्रार्थी के विरूद्व अनुशासनात्मक कार्यवाही नहीं की ऐसी शिकायत आने पर उसको बुलाकर बातचीत की जाती है। इस केस में प्रार्थी से सम्बन्धित शिकायते पेश नहीं की है। यह सही है कि 11.09.2019 को नौकरी से निकालने की शिकायत प्रार्थी द्वारा सहायक श्रम आयुक्त केन्द्रीय के समक्ष की गई। शिकायत बाबत हुई समझौता वार्ता में मैने प्रार्थी को डयूटी पर लेने की बात कही थी। यह सही है कि प्रार्थी को नोटिस देकर दिनांक 12.12.2019 को सेवा से पृथक कर दिया था क्योकि प्रार्थी डयूटी पर नहीं आ रहा था। यह सही है कि प्रार्थी ने दिनांक 12.12.2019 को सेवापृथक करने की शिकायत भी सहायक श्रम आयुक्त केन्द्रीय अजमेर को थी। यह सही है कि हमने प्रार्थी को हाइड्रा से वायरसा डिपार्टमेंट में स्थानान्तरित किया था क्योकि प्रार्थी के पास हाइड्रा का लाइसेंस नहीं था। इसकी सूचना प्रदर्श एम2. प्रार्थी को उसी समय बाई हेण्ड दी गई थी। यह सही है कि प्रदर्श एम.2 पर रसीद नहीं है क्योकि प्रार्थी ने लेने से इंकार कर दिया था। यह सही है कि प्रदर्श एम.2 पर प्रार्थी द्वारा मना किये जाने का मार्का नहीं है। यह सही है कि

इस पर डिस्पेच नम्बर नहीं है क्योकि ऐसा रजिस्टर हमारे यहां नहीं है। प्रार्थी के द्वारा लेटर लेने से मना करने पर हमने उसे लिखित में कोई नोटिस नहीं दिया बल्कि उसे मौखिक रूप से कहा था। प्रदर्श एम.3,5,6,7,9 डाक से भेजा था इसकी रसीदे पेश नही की है। यह कहना सही है कि हमने बाबू सिंह की दिसम्बर, 2019 की हाजरी पेश नहीं की है जो मांगी नहीं इसलिये पेश नहीं की। यह सही है कि प्रार्थी के बाद उसकी जगह पर दूसरा मजदूर काम कर रहा है अजखुद कहा कि आज भी इनकी जगह खाली है। यह कहना सही है कि हमने प्रार्थी को निकालने के पहले नोटिस नहीं दिया। यह सही है कि प्रार्थी को क्षतिपूर्ति राशि नहीं दी। हमने प्रार्थी को प्रदर्श एम.9 निष्कासन पत्र दिया था। प्रार्थी वर्तमान में कहॉ काम करता है वह मैं नहीं बता सकता।

इस प्रकार जहां प्रार्थी विपक्षी द्वारा उसको बिना कोई कार्यवाही किये सेवापृथक किये जाने का कथन करता है वहीं विपक्षी का गवाह भी अपने प्रतिपरीक्षण में यह स्वीकार करता है कि उन्होने प्रार्थी के विरूद्व अनुशासनात्मक कार्यवाही नहीं की। इस केस में प्रार्थी से सम्बन्धित शिकायते पेश नहीं की। समझौता वार्ता के दौरान भी प्रार्थी को डयूटी पर लेने की बात कही थी। प्रार्थी को हमने नोटिस देकर दिनांक 12.12.2019 को सेवापृथक कर दिया क्योकि वह नौकरी पर नहीं आ रहा था। इस प्रकार विपक्षी स्वयं की ओर से यह स्वीकार किया गया है कि उनके द्वारा प्रार्थी के विरूद्व कोई अनुशासनात्मक कार्यवाही नहीं की गई, प्रार्थी के विरूद्व शिकायतें न्यायालय में पेश नहीं की गई और समझौता वार्ता के दौरान भी प्रार्थी को डयूटी पर लेने की बात कही थी। विपक्षी ने जबाव में यह भी लिखा है कि वे आज भी प्रार्थी को डयूटी पर लेने को तैयार है। विपक्षी के गवाह ने दौराने प्रतिपरीक्षण यह भी स्वीकार किया है कि प्रदर्श एम.2 पर डिस्पेच नम्बर नहीं है। गवाह ने यह भी स्वीकार किया है कि प्रार्थी को निकालने से पहले नोटिस नहीं दिया था। प्रार्थी को क्षतिपूर्ति राशि नहीं दी थी। प्रार्थी के बाद उसकी जगह पर दूसरा मजदूर काम कर रहा है अजखुद कहा कि आज भी इसकी जगह खाली है। इस प्रकार विपक्षी स्वयं की स्वीकारोक्ति से ही यह तथ्य स्पष्ट हो जाता है कि प्रार्थी के विरूद्व उनके द्वारा कोई अनुशासनात्मक कार्यवाही नहीं की गई और उसको किसी प्रकार से कोई दंड भी नहीं दिया गया तथा मात्र प्रार्थी द्वारा नौकरी पर नहीं आने के कारण उसको सेवापृथक कर दिया गया है। किसी भी संस्थान में किसी भी कर्मचारी को सेवापृथक करने के लिये निर्धारित नियमों के अनुसार कार्यवाही करके ही किसी प्रार्थी को सेवापृथक किया जा सकता है लेकिन हस्तगत प्रकरण में न तो प्रार्थी के खिलाफ कोई अनुशासनात्मक कार्यवाही की गई और न ही किसी प्रकार की कोई जांच की जाकर प्रार्थी को दोषी पाये जाने पर उसको सेवापृथक किया गया है। इस प्रकार विपक्षी स्वयं की साक्ष्य से ही यह तथ्य साबित हो जाता है कि विपक्षी द्वारा प्रार्थी को सेवापृथक किये जाने का आदेश अनुचित एवं अवैध है। विपक्षी की ओर से यह भी स्वीकार किया गया है कि प्रार्थी का पद आज भी खाली है। जब विपक्षी द्वारा प्रार्थी को अनुचित एवं अवैध रूप से सेवापृथक किया गया है तो प्रार्थी निश्चित रूप से उसको सेवापृथक किये जाने की दिनांक से सेवानिवृति की दिनांक तक उसको मिलने वाले समस्त लाभ, परिलाभ जो सेवा में रहते हुए मिलते, आदि प्राप्त करने का तथा दिनांक 01.09.2019 से पुनः सेवा बहाली का अधिकारी पाया जाता है।

इस बाबत अधिवक्ता विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टान्त के तथ्य हस्तगत प्रकरण के तथ्यों से भिन्न होने के कारण इससे विपक्षी को कोई लाभ नहीं मिल सकता है। क्यूकि न्यायिक दृष्टान्त वाले प्रकरण में विपक्षी नम्बर–2 द्वारा सब्जी की दुकान चलाये जाने का काम करना अपीलार्थी द्वारा बताया गया था लेकिन हस्तगत प्रकरण में विपक्षी की ओर से ऐसे कोई तथ्य नहीं बताये गये है कि विपक्षी कोई काम धंधा करके आय अर्जित करता हो जिस कारण वह कोई राशि पाने का अधिकारी नहीं हो।

हस्तगत प्रकरण में चूॅकि प्रार्थी ने दिनांक 11.09.2019 से अब तक वास्तव में विपक्षी के यहां अपनी सेवाऐं नहीं दी है। अतः प्रार्थी न्यायिक दृष्टान्त 1999 एल ए बी आई सी पेज 619 एम सी डी बनाम प्रवीण कुमार जैन व अन्य में प्रतिपादित सिद्वान्त के प्रकाश में दिनांक 01.09.2019 से आज दिनांक तक के उसको सेवा में रहते हुए मिलने वाले समस्त वेतन,भत्तों परिलाभों का 50 प्रतिशत हिस्सा प्राप्त करने का अधिकारी है। इसी प्रकार प्रार्थी का सेवामुक्ति आदेश अवैध एवं शून्य होने से प्रार्थी पुनः सेवाबहाली का अधिकारी है। प्रार्थी को इस प्रकार मिलने वाली राशि पर नियमानुसार आयकर भुगतान के बाद ही प्रार्थी उक्त राशि प्राप्त करने का अधिकारी होगा।

उक्त विवेचन के आधार पर **पंचाट** इस प्रकार पारित किया जाता है कि–

प्रार्थी को विपक्षी द्वारा दिनांक 12.12.2019 से अवैध रूप से सेवापृथक कर दिया गया है इसलिये विपक्षी प्रार्थी को पुनः सेवा में बहाल करे तथा प्रार्थी को दिनांक 01.09.2019 से अब तक की अवधि में उसके सेवा में रहते हुए मिलने वाले वेतन, भत्ते आदि परिलाभ का 50 प्रतिशत हिस्सा दिलाया जाना न्यायसंगत पाया जाता है। प्रार्थी को इस प्रकार मिलने वाली समस्त राशि पर नियमानुसार आयकर कटौती के पश्चात् मिलने वाली राशि प्रार्थी विपक्षी से प्राप्त करने का अधिकारी होगा। विपक्षी, प्रार्थी को तुरंत पुनः सेवा में बहाल करे तथा दिनांक 01.09.2019 से लेकर आज दिनांक तक को, उसके सेवा में रहते हुए मिलने वाले वेतन, भत्ते तथा मिलने वाले समस्त लाभ, परिलाभ की राशि का 50 प्रतिशत अदा करे।

पंचाट प्रकाशनार्थ भारत सरकार के श्रम एवं रोजगार विभाग की अधिसूचना दिनांक 27.02.2020 के तहत उप मुख्य आयुक्त श्रम (केन्द्रीय) अहमदाबाद लिंक आफिसर अजमेर को भेजा जावे।

(सुशील कुमार जैन)

पंचाट/निर्णय आज दिनांक 17.12.2024 को खुले न्यायालय में लिखाया जाकर सुनाया गया।

नई दिल्ली, 14 फरवरी, 2025

का.आ. 224.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स होशी सिक्योरिटी इंडिया प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री संदीप कुशवाहा** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद, पंचाट (रिफरेन्स न.- सीजीआईटी/एलटी/-**

आरसी/56/2024) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2024- आई आर (एम)-156]
दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 224.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. CGIT/LC/-RC/56/2024)** of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Hoshi Security India Pvt. Ltd.** and **Sri Sandeep Kushwaha** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. L-16025/04/2024- IR (M)-156]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/56/2024

Present: P.K.Srivastava

H.J.S..(Retd)

Sandeep Kushwaha

Adarsh Nagar, Nai Basti, Ward No. 13

Galla Mandi ke Pichhe, Satna

M.P. - 485005

Workman

Versus

M/s. Hoshi Security India Pvt. Ltd.

E-12A, M.B. Road

New Delhi.

Management

(JUDGMENT)

(Passed on this 11th day of November-2024)

As per letter dated 13/06/2024 by the Deputy Labur Commissioner (Central) Jabalpur, Ministry of Labour, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 as per Notification No. J-5(10)/2023-ALC dt. 13/06/2024. The dispute under reference relates to:

"Whether, the action of the employer M/s. Hoshi Security India Pvt. Ltd. New Delhi contractor of Sangmaniya Line Stone Mines, Satna in terminating the services of Shri Sandeep Kushwaha is legal, valid & justified ? If not, what relief the workman is entitled for ?"

After registering a case on the basis of the reference, notices were sent to the parties.

The workman appeared and filed an application with his photocopy of Aadhar Card as his identity proof, stating that he has been employed by the management, hence no dispute remains to be decided. He requests that, the reference be answered accordingly.

Since, the dispute has now ceased to exist between the parties, the reference has become in fructuous and is answered accordingly.

DATE:- 11/11/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 225.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **स्टील अथॉरिटी ऑफ़ इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री पफुल्ला कुमार सेठी** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर, पंचाट (रिफरेन्स न.- 06/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 16025/04/2025- आई आर (एम)-1]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 225.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 06/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Steel Authority of India Limited** and **Shri Pafulla Kumar Sethi** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. Z-16025/04/2025- IR (M)-1]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,

Presiding Officer, C.G.I.T.-cum-Labour Court,

Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 06/2022

Filed under Section 2-A(2) of the I.D. Act

Date of Passing Order – 26th November, 2024

Between :-

Shri Pafulla Kumar Sethi,

At. Harishankarpur, Po. Jitanga,

Dist. Balasore, Odisha – 756 127

… Applicant-Workman.

(And)

The Chief General Manager (Mechanical),

Steel Authority of India Limited,

Rourkela Steel Plant, At. Rourkela,

Dist. Sundargarh.

… Management.

Appearances:

Sri Nitish Kr. Mishra, … For the Applicant-Workman.

Advocate.

Sri Subrat Kumar Mishra, … For the Management.

Advocate.

ORDER

This is an application of applicant-workman filed under section 2-A(2) of the Industrial Disputes Act (herein-after referred as an "Act").

2. The case of the applicant-workman as per his statement of claim in brief is as follows:-

That, he was working as Junior Controller in the Transport Department of the Rourkela Steel Plant and he was removed from his services after being charge-sheeted by the Management with accusation of committing certain acts of alleged misconduct like taking bribe and indulging in corrupt practice. The allegations in the charge dated 24.11.2019 are vague and have no ground. The action of the Management in terminating his services with effect from 09.11.2019 is illegal and unjustified. Such action of the management is an unfair labour practice. He approached the Labour Enforcement Officer (Central), Paradip, but no result was yielded. Hence he has filed the present claim petition. He has prayed to answer the present dispute in his favour by passing an award with direction for his reinstatement into service and for payment of full back wages.

3. The 1st Party-Management has appeared and filed its written statement. The case of the 1st Party-Management in brief is as follows:-

That, in the domestic enquiry the enquiry committee found that the documents submitted by the Management before the enquiry were sufficient and conclusive to prove that the 2nd party-workman had committed the misconduct of taking bribes and indulging in corrupt practices which amounts to the acts of misconduct under Clause 28(viii) of the Management's Certified Standing Order as mentioned in the Charge-sheet. The applicant workman was afforded ample opportunities to defend himself during enquiry which the applicant workman had availed of the same. The disciplinary authority being satisfied that the enquiry had been conducted observing the principles of natural justice fully agreed with the findings of the enquiry committee the applicant workman was removed from the services of the Management as a disciplinary measure. The applicant-workman had filed an O.A. Case before the Central Administrative Tribunal, Cuttack Bench Cuttack which he has suppressed in his statement of claim. The punishment of removal from service is neither a shocking and disproportionate.

A prayer has been made to dismiss the case of the applicant-workman.

4. When the case was posted for evidence of the 1st Party-Management on the point of proving the fairness of the domestic enquiry conducted against the workman learned lawyer for the 2nd party-workman has filed a petition and submitted that the applicant had earlier filed O.A. No. 765/2019 before the Central Administrative Tribunal, Cuttack challenging his termination and the said O.A. is still pending adjudication before the Central Administrative Tribunal, Cuttack Bench, as such he do not want to further proceed with the case before this Tribunal. The Management has raised no objection.

5. On hearing of the parties and as the learned lawyer for the Management has raised no objection on the petition filed by the applicant workman to withdraw his application the applicant-workman is permitted to withdraw his application filed under section 2-A(2) of the I.D. Act.

6. Hence the case is dismissed as withdrawn.

7. A copy of this order is sent to the appropriate government for notification as required under section 17 of the I.D. Act, 1947. File is consigned to record room.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स नालको लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **नालको एम्प्लाइज संघ** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर, पंचाट (रिफरेन्स न.- 04/2019)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. जेड - 43011/04/2018- आई आर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2025

S.O. 226.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 04/2019)** of the **Central Government Industrial Tribunal cum Labour Court, Bhubaneswar** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s NALCO Limited** and **NALCO Employees Sangh** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. Z-43011/04/2018- IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,

Presiding Officer, C.G.I.T.-cum-Labour Court,

Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 04/2019

Date of Passing Order – 25th November, 2024

Between :-

The General Manager (S&P),

M/s. NALCO Ltd., P.O. Nalco Nagar,

District – Angul (Odisha) – 759 145

… 1st Party-Management.

(And)

The General Secretary, Nalco Employees

Sangh, Post – Nalco Nagar, District – Angul,

Odisha – 759 145.

… 2nd Party-Union.

Appearances:

None. … For the 1st Party-Management.

None. … For the 2nd Party-Union.

ORDER

In the present case, a reference was received from the Under Secretary to the Government of India, Ministry of Labour & Employment, New Delhi vide order No. L-43011/4/2018 – IR(M), dated 28.12.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, under the following schedule:-

> "Whether the enquiry proceeding by the management of National Aluminium Co. Ltd., Odisha against the workman Shri Krushna Singh Janka is vitiated? If yes, what relief the workman is entitled to?"?"

2. In the reference order, the Under Secretary to Government of India, Ministry of Labour & Employment, New Delhi commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-Union.

4. On receipt of the above reference, notice was sent to the 2nd Party-Union on 12.09.2019, 31.12.2019, 27.04.2023 and lastly on dated 08.01.2024 for appearanceand for filing of statement of claim. Neither the postal article sent to the 2nd Party-Union, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Union. Despite service of the notice, the 2nd Party-Union opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Union is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Union has neither filed statement of claim nor has led any evidence so as to prove its cause against the Management, it is presumed that there is no claim of workman against the Management.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 14 फरवरी, 2025

का.आ. 227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सेंट्रल वेयर हाउसिंग कॉर्पोरेशन** के प्रबंधतंत्र के संबद्ध नियोजकों और **सेंट्रल वेयर हाउसिंग कॉर्पोरेशन लेबर यूनियन** के बीच अनुबंध में निर्दिष्ट **औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट (रिफरेन्स न.- 05/1997)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.02.2025 को प्राप्त हुआ था।

[सं. एल - 16025/04/2025- आई आर (एम)-8]

दिलीप कुमार, अवर सचिव

New Delhi, the 14th February, 2024

S.O. 227.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 05/1997)** of the **Industrial Tribunal cum Labour Court, Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Central Warehousing Corporation** and **Central Warehousing Corporation Labour Union** which was received along with soft copy of the award by the Central Government on 14.02.2025.

[No. L-16025/04/2025- IR (M)-8]

DILIP KUMAR, Under Secy.

अनुलग्नक

समक्ष केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर, राजस्थान

Presiding Officer : Rekha Bhargava, RJS (DJ Cadre)

Central IT Case No. : 05/1997

CIS No. : 53/2014

रैफरैंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल–42011/5/96– आई.आर.(विविध) दिनांक 13.01.1997

सेन्ट्रल वेयर हाउसिंग कॉरपोरेशन लेबर यूनियन, 75, महावीर शोपिंग सेंटर, श्रीगंगानगर मार्फत जनरल सैकेट्री श्री दर्शन काडा।

——— प्रार्थी यूनियन

बनाम

सेन्ट्रल वेयर हाउसिंग कॉरपोरेशन जरिये रीजनल मैनेजर, 92, दिपाली बिल्डिंग, नेहरू पेलेस, नई दिल्ली।

——— अप्रार्थी

उपस्थित

प्रार्थी की ओर से : श्री जुगलकिशोर अग्रवाल

अप्रार्थी की ओर से : श्री मनोज गोयल

दिनांक : 13.12.2024

अधिनिर्णय

भारत सरकार के श्रम मंत्रालय की उपरोक्त आज्ञा क्रमांक से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है –

"Whether the 120 contract labourers (list enclosed) employed since many years at Central Warehousing corporation at Sri Ganganagar & Hanumangarh are entitled for absorption in employment of Central Warehousing corporation as Workman? If not, to what relief the workmen are entitled as they are employed since many years through contractor and are denied wages and other facilities as provided to the workmen of Central Warehousing corporation."

रैफरैंस के संबंध में प्रार्थी यूनियन की ओर से स्टेटमैंट ऑफ क्लेम पेश कर अभिकथन किया है कि प्रार्थी यूनियन एक रजिस्टर्ड ट्रेड यूनियन है, जिसमें सेन्ट्रल वेयरहाउसिंग कॉरपोरेषन के स्वामित्व वाले गंगानगर जिले के विभिन्न गोदामों में काम करने वाली कर्मचारी शामिल है। सेन्ट्रल वेयरहाउसिंग कॉरपोरेषन खाद्यान्न, उर्वरक और ऐसी अन्य चीजों का भंडार कर समुदाय को भौतिक सेवाएं प्रदान करता है। यह भारत सरकार का एक उपक्रम है लेकिन इसकी एक स्वतंत्र इकाई भी है, जो औद्योगिक विवाद अधिनिय की धारा 2(जे) के तहत उद्योग की परिभाषा में आता है। अप्रार्थी संस्थान के गोदामों में लोडिंग, अनलोडिंग और स्टेकिंग का कार्य नियमित रूप से होता है, जो गोदाम गतिविधियों का अभिन्न अंग है। यह कार्य कुछ ठेकेदारों के माध्यम से श्रमिकों द्वारा किया जाता है। प्रार्थी श्रमिकगण पिछले 10 वर्षों से अप्रार्थी निगम में काम कर रहे हैं तथा प्रार्थी श्रमिकगण द्वारा किया जा रहा काम आकस्मिक प्रकृति का नहीं होकर स्थाई प्रकृति का है। अप्रार्थी निगम द्वारा कानूनी अधिकारी और सेवा से वंचित करने के लिये ठेकेदारों की नियुक्ति दर्शाई हुई है, जो श्रमिकों का शोषण है। इन श्रमिकों की स्थिति भारतीय खाद्य निगम में माल चढाने, उतारने वाले श्रमिकों के समान है जिन्हें न्यायालयों द्वारा भारतीय खाद्य निगम के प्रत्यक्ष रोजगार में घोषित किया गया है। संविदा श्रम (उन्मूलन एवं नियमितीकरण) अधिनियम ऐसे मामले में लागू नहीं किया जा सकता जहां कार्य उद्योग का एक अभिन्न अंग हो तथा नियमित व स्थाई प्रकृति का है। अंत में प्रार्थी श्रमिकगण को सेन्ट्रल वेयरहाउसिंग कॉरपोरेशन के स्थाई नियमति कर्मचारी घोषित किया जाकर उन्हें वेतन, महंगाई भत्ता, अन्य भत्ते, बोनस छुट्टी के साथ–साथ अन्य सभी लाभ दिलाये जावें।

अप्रार्थी निगम की ओर स्टेटमैंट ऑफ क्लेम का जवाब प्रस्तुत कर कथन किया है कि सेन्ट्रल वेयरहाउसिंग कॉरपोरेषन एक भारत सरकार का उपक्रम है, जो वेयर हाउसिंग कारपोरेशन एक्ट 1962 की धारा 11 के तहत सौंपे गये वैधानिक कार्यों का निष्पादन करता है। निगम के देषभार में 16 क्षेत्रीय कार्यालय हैं जो भारत के विभिन्न भागों में लगभग 480 गोदामों को नियंत्रित कर रहे हैं। अप्रार्थी निगम के अपने भर्ती नियम व सेवाषर्तें हैं, जिन्हें सी0डवल्यू0सी0(कर्मचारी) विनियम 1986 में शामिल किया गया है, जो सरकार द्वारा अनुमोदित है। निगम का मुख्य कार्य व्यक्तियों, सहकारी समितियों और अन्य संस्थानों द्वारा प्रस्तुत कृषि उपज, बीज, खाद, उर्वरक और अन्य अधिसूचित वस्तुओं का भण्डारण करना है और जिसके लिये भंडार शुल्क लिया जाता है। अप्रार्थी निगम एक जमाकर्ता एजेंट के रूप में कार्य करता है। निगम के पास लोडिंग, अनलोडिंग कार्य करने के लिये देष में कहीं भी अपने नियमित कर्मचारी नहीं है क्योंकि यह कार्य कभी कभार अप्रत्याशित और अनिष्चित होता है, जो लाइसेंसधारक ठेकेदारों द्वारा ठेका मजदूरों के माध्यम से किया जाता है। निगम के भर्ती नियमों में लोडिंग, अनलोडिंग श्रमिकों की भर्ती का कोई प्रावधान नहीं है। प्रार्थी यूनियन द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम अधिनियम 1947 के अन्तर्गत पोषणीय नहीं है क्योंकि प्रार्थी श्रमिकगण एवं अप्रार्थी निगम के मध्य नियोक्ता–कर्मचारी का संबंध नहीं है। प्रार्थी यूनियन की संविदारत श्रमिकों की समायोजन की मांग अधिनियम के प्रावधान व कॉन्ट्रेक्ट लेबर (आर एण्ड ए) अधिनियम 1970 के विपरीत है और न ही अप्रार्थी निगम के भर्ती नियमों में इसे समाहित ही किया जा सकता है। अप्रार्थी निगम में लोडिंग एवं अनलोडिंग का कार्य नियमित कार्य नही है बल्कि आवष्यकता के अनुरूप ठेकेदारों के माध्यम से लोडिंग व अनलोडिंग कार्य कराया जाता है। प्रार्थी श्रमिकगण अप्रार्थी निगम द्वारा नियोजित नहीं किये जाते हैं बल्कि ठेकेदार द्वारा उक्त कार्य हेतु श्रमिक उपलब्ध कराये जाते हैं, जो उनके ही अधीन एवं नियंत्रण में कार्य करते हैं तथा यह ठेकेदारों पर निर्भर करता है कि वह किस श्रमिक को कार्य पर भेजे। किसी भी गोदाम में लोडिंग एवं अनलोडिंग हेतु नियमित कर्मचारी नहीं है। जमाकर्ताओं के अनुरोध एवं आवष्यकता के आधार पर निष्चित अवधि के लिये ठेकेदारों से अनुबंध किया जाता है। ठेकेदारों द्वारा अनुबंध श्रम (आर एण्ड ए) अधिनियम 1970 के तहत लाईसेंस प्राप्त करने के बाद ही श्रमिक उपलब्ध कराये जाते हैं। ठेकेदार ही श्रमिकों का नियोक्ता है जिन पर नियंत्रण भी ठेकेदार का होता है। अप्रार्थी निगम के कार्य की तुलना एफसीआई से नहीं की जा सकती क्योंकि उनकी त्रिस्तरीय प्रणाली है जिसमें खाद्यानों व अन्य वस्तुओं के भंडारण के अलावा खाद्यानों की खरीद एवं वितरण का कार्य भी करती है। जबकि अप्रार्थी निगम केवल संग्रहण का कार्य कर एक जमाकर्ताएजेंट के रूप में कार्य करती है। अंत में प्रार्थी यूनियन द्वारा प्रस्तुत क्लेम खारिज किये जाने की प्रार्थना की है।

प्रार्थी यूनियन की ओर से जवाबुल जवाब पेष कर अभिकथन किया है कि अप्रार्थी निगम का एक मात्र उद्देष्य भण्डारण का कार्य करना है, जो प्रार्थी श्रमिकगण द्वारा किया जाता है, यदि प्रार्थी श्रमिकगण को कार्य से हटा दिया जाये तो विपक्षी संस्थान का अस्तित्व ही नहीं रहेगा। प्रार्थी श्रमिकों पर पूर्ण नियंत्रण अप्रार्थी संस्थान के डिपो मैनेजर, गोदाम इंचार्ज अथवा बाबू का रहता है। विपक्षी संस्थान द्वारा श्रम कानूनों से बचने के लिये तथा अपने चहेतों व ठेकेदारों को लाभ पहुचाने के लिये ठेकेदारों को भुगतान किया जा रहा है। प्रार्थी श्रमिगण 15–20 वर्षों से विपक्षी निगम में अपनी सेवाएं दे रहे हैं, जो स्थाई प्रकृति की है। अंत में श्रमिकों को नियुक्ति तिथि से स्थायित्व प्रदान करते हुये पिछले समस्त वेतन, बोनस, छुट्टियों का लाभ आदि दिलाये जाने की प्रार्थना की गई है।

प्रार्थी यूनियन की ओर से अपने स्टेटमेंट ऑफ क्लेम के समर्थन में सर्वश्री श्यामलाल, विजय सिंह, सिराज खां, जसवंत सिंह, कोर सिंह, बलवंत सिंह, रतनलाल एवं अर्जुन के शपथ पत्र पेश हुये हैं, जिनसे अप्रार्थी प्रतिनिधि द्वारा जिरह की

गई है तथा अप्रार्थी निगम की ओर से सर्वश्री श्याम सिंह, जमीत सिंह, जगदीश सिंह पुराहित, शेर जगजीत सिंह एवं जे.पी. यादव के शपथ पत्र पेष हुये हैं जिनसे प्रार्थी प्रतिनिधि द्वारा जिरह की गई।

उभय पक्षों की साक्ष्य का परिषीलन करें तो प्रार्थी यूनियन की ओर से सचिव श्यामलाल ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि विपक्षी संस्थान का मुख्य एवं केवल मात्र कार्य खाद्यान्न, खाद्य व अन्य वस्तुओं के भण्डारण का है, जिसके एवज में चार्जेज अथवा किराया राशि अप्रार्थी निगम द्वारा ली जाती है। जिसके लिये अप्रार्थी निगम द्वारा मैनेजर, फर्स्ट,सैकेण्ड मैनेजर, बाबू, गोदाम इंचार्ज, कैशियर, चोकीदार, सफाई कर्मचारी, गोदामों में दवा छिड़कने वाला तथा माल को एक स्थान से दूसरे स्थान पर रखने के लिये श्रमिकगण की नियुक्ति की जाती है। श्रमिकगण की नियुक्तियां भी विपक्षी के अधिकारी करते है। इस प्रकार करीब 200–250 व्यक्तियों का स्थाई स्टाफ कार्य करता है। विपक्षी संस्थान में माल को लोडिंग व अनलोडिंग का कार्य स्थाई प्रकृति का है, जो प्रार्थी श्रमिकगण द्वारा किया जाता है। माल उतारने एवं चढाने का कार्य यदि नहीं हरेगा तो तो विपक्षी संस्थान का अस्तित्व समाप्त हो जायेगा। प्रार्थी श्रमिकगण करीब 15–20 वर्षों से कार्य कर रहे हैं तथा कई श्रमिक तो जब से वेयर हाउस बना तब से कार्य कर रहे हैं। विपक्षी द्वारा ठेकेदार तो विचोलिये के रूप में प्रभावशाली व्यक्तियों को आर्थिक लाभ पहुंचाने के लिये नाम मात्र के बना रखे हैं। अप्रार्थी के दिल्ली, बम्बई एवं गुजरात में स्थित गोदामों एवं ऑफिस में लोडिंग एवं अनलोडिंग का कार्य करने वाले नियमित श्रमिक है तथा उनका पी.एफ., ईएसआई भी कटता है, सालाना सूती व गरम वर्दी मिलती है। प्रार्थी श्रमिकगण पर पूर्ण नियंत्रण अप्रार्थी डिपो मैनेजर, गोदाम इंचार्ज अथवा बाबू का रहता है। ठेकेदार को भुगतान किये जाने वाले रेट का निर्धारण हैड आफिस के द्वारा तय किया जाता है उसमें ब्रांच आफिस या ठेकेदार का किसी का कोई हस्तक्षेप नहीं होता है। प्रार्थी श्रमिकगण कभी भी ठेकेदार के आदमी नहीं रहे हैं।

प्रतिपरीक्षण के दौरान कथन किया है कि सेन्ट्रल वेयर हाउस हनुमानगढ में 3–4 साल से काम करने का कोई प्रमाण मेरे पास नहीं है। कार्य करने का लिखित आदेष नहीं देते। मुझे ध्यान नहीं है कि गोदाम में प्राइवेट पार्टी माल रखती है या एफसीआई। वैसे तो रोजाना काम पर जाते हैं लेकिन यदि काम से निकाल देते हैं तो बुलाने पर ही काम पर जाते हैं। हमारे साथ स्थाई कर्मचारी लोडिंग या अनलोडिंग कार्य नहीं करते। छुट्टी देते है तो चले जाते हैं, दरख्वास्त नहीं देते। सी.डवल्यू.सी. की तरफ से पाबंदी है कि हम कहीं और काम करने नहीं जाते लेकिन ऐसा लिखित में आदेष नहीं है। ज्यादा काम होता है तो जल्दी जाते हैं और ज्यादा काम करते हैं। लिखित में समझौता नहीं होता, जुबानी होता है। निगम में कोई ठेकेदार काम नहीं करते। मजदूरी का बिन मैनेजर व बाबू ही बनाते हैं। मजदूरी का भुगतान कभी 15 दिन में कभी सप्ताह में और कभी रोजना हो जाता है जो भुगतान मैनेजर व बाबू लोग करते हैं।

इसी प्रकार श्रमिकगण , विजय सिंह, सिराज खां, जसवंत सिंह, कोर सिंह, बलवंत सिंह, रतनलाल एवं अर्जुन द्वारा अपने शपथ पत्र के मुख्य परीक्षण में गवाह श्यामलाल द्वारा मुख्य परीक्षण में दिये गये कथनों को दोहरायते हुये अप्रार्थी निगम में 15–20 वर्षो से कार्य किया जाना बताया है।

अप्रार्थी निगम की ओर से प्रस्तुत गवाहान श्याम सिंह, जमीत सिंह, जगदीश सिंह पुराहित, शेर जगजीत सिंह एवं जे. पी. यादव ने अपनी साक्ष्य के मुख्य परीक्षण में स्टेटमेंट ऑफ क्लेम में के जवाब में वर्णित तथ्यों को दोहरो हुये अप्रार्थी निगम में नियमित कर्मचारियों की नियुक्ति सी.डवल्यू.सी.(स्टाफ) अधिनियम 1986 के तहत होना तथा लोडिंग व अनलोडिंग कार्य हेतु स्थाई कर्मचारी नियुक्त नहीं किये जाकर बल्कि ठेकेदार के माध्यम से लोडिंग व अनलोडिंग कार्य एक निश्चित अवधि के लिये आवश्यकता के अनुसार कराया जाना कथन किया है।

उभय पक्षों की बहस सुनी गई। प्रार्थी यूनियन की ओर से विद्वान प्रतिनिधि द्वारा दौराने बहस कथन किया है कि श्रमिकगण द्वारा जो लोडिंग व अनलोडिंग का कार्य किया जाता है वह स्थाई प्रकृति का है, जो हमेषा होने वाला कार्य है क्योंकि अप्रार्थी निगम खाद्यान्न व अन्य सामग्री को भंडार करने का कार्य करता है जिसके एवज में उसके द्वारा किराये राशि के रूप में चार्जेज लिये जाते हैं। अप्रार्थी निगम भारत सरकार का उपक्रम है लेकिन उसकी यह स्वतंत्र इकाई है जिस पर औद्योगिक विवाद अधिनिय की धारा 2(जे) के तहत उद्योग की परिभाषा में आता है। अप्रार्थी संस्थान के गोदामों में लोडिंग, अनलोडिंग और स्टेकिंग का कार्य नियमित रूप से होता है, जो गोदाम गतिविधियों का अभिन्न अंग है। प्रार्थी श्रमिकगण पिछले 20 वर्षों से अप्रार्थी निगम में काम कर रहे हैं अप्रार्थी निगम द्वारा कानूनी अधिकारी और सेवा से वंचित करने के लिये ठेकेदारों की नियुक्ति दर्षाई हुई है, जो श्रमिकों का शोषण है। जबकि प्रार्थी श्रमिकगण भारतीय खाद्य निगम में माल चढाने, उतारने वाले श्रमिकों के समान है जिन्हें न्यायालयों द्वारा भारतीय खाद्य निगम के प्रत्यक्ष रोजगार में घोषित किया गया है। संविदा श्रम (उन्मूलन एवं नियमितीकरण) अधिनियम ऐसे मामले में लागू नहीं किया जा सकता जहां कार्य उद्योग का एक अभिन्न अंग हो तथा नियमित व स्थाई प्रकृति का है। अतः प्रार्थी श्रमिकगण को सेन्ट्रल वेयरहाउसिंग कॉरपोरेशन के स्थाई नियमति कर्मचारी घोषित किया जाकर उन्हें वेतन, महंगाई भत्ता, अन्य भत्ते, बोनस छुट्टी के साथ–साथ अन्य सभी लाभ दिलाये जावे। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेष किये गये हैं –

1. 2011 एआईआर एससीडवल्यू 3455 देवेन्द्र सिंह बनाम मुंनिसिपल कॉरपोरेषन।
2. (2003)6 सुप्रीम कोर्ट केसेज 528 भारत हैवी इलैक्ट्रीकल्स लिमिटेड बनाम स्टेट ऑफ यू.पी. व अन्य।
3. 2011(131) एफएलआर 759 भीलवाड़ा दुग्ध उत्पादक सहकारी समिति लिमिटेड बनाम विनोद कुमार शर्मा(मृतक) जरिये विधिक वारीसान
4. आरएलडवल्यू 2004(2) राज. 1312 चंबल फर्टीलाईजस एण्ड कैमीकल्स लि0 बनाम स्टेट ऑफ राज0 व अन्य।
5. 2006(1) आरएलडवल्यू पेज 210 ब्रजेष नारायण बनाम राज0 स्टेट कोपरेटिव बैंक लिमिटेड।
6. 2023(10) वेस्टर्न लॉ केसेज पेज 223 (राज.) सूरज प्रकाष बनाम लेबर कोर्ट एण्ड इण्डस्ट्रियल ट्रिब्युनल।

7. 1993(1) डवल्यू एल एन 439 हिंदुस्तान मषीन टूल्स लि0 अजमेर बनाम इण्डस्ट्रियल ट्रिब्युनल व अन्य।

8. 2010 वेस्टर्न लॉ केसेज (राज.) यूसी 395 राज0 स्टेट टेक्स्ट बुक बोर्ड बनाम श्री कजोडमल व अन्य।

9. 2008(118) एफएलआर 942 सेन्ट्रल मैनेजर ओएनजीसी सिल्चार बनाम ओएनजीसी कॉन्ट्रेक्चुअल वर्कर्स यूनियन।

10. 1990(61) एफएलआर 253 एफसीआई वर्कर्स यूनियन बनाम एफसीआई व अन्य।

11. 2015 लेब आई सी 2012 तमिलनाडू एलआईसी एम्पलाईज एसोसियेषन बाम एलआईसी ऑफ इण्डिया।

12. 1994(69) एफएलआर 256 आर.के. पांडा बनाम आर्थोरिटी ऑफ इण्डिया।

13. 1960 II एल एल जे सुप्रीम कोर्ट 233 स्टेण्डर्ड वेक्यूम रिफाईनिंग कंपनी ऑफ इण्डिया लि0 बनाम श्रमिक व अन्य।

14. 1967 II एल एल जे सुप्रीम कोर्ट 23 नेषनल आईरन एण्ड स्टील कंपनी लि0 व अन्य बनाम स्टेट ऑफ वेस्ट बंगाल व अन्य।

15. ए आई आर 1978 सुप्रीम कोर्ट 1410 हुसैनभाई बनाम फैक्ट्री टेझीलाली व अन्य।

अप्रार्थी प्रतिनिधि की ओर से दौराने बहस कथन किया है कि अप्रार्थी निगम भारत सरकार का एक उपक्रम है। प्रार्थी श्रमिकगण एवं निगम के मध्य कभी भी नियोक्ता–कर्मचारी का संबंध नहीं रहा है। अप्रार्थी निगम में सी0डवल्यू0सी0(कर्मचारी) विनियम 1986 की नियमों के तहत भर्ती प्रक्रिया होती है। निगम द्वारा कृषि उपज, बीज, खाद, उर्वरक और अन्य अधिसूचित वस्तुओं का भण्डारण एक जमाकर्ता एजेंट के रूप में कार्य करता है। निगम के पास लोडिंग, अनलोडिंग कार्य करने के लिये देष में कहीं भी अपने नियमित कर्मचारी नहीं है क्योंकि यह कार्य कभी कभार अप्रत्याषित और अनिष्चित होता है, जो लाइसेंसधारक ठेकेदारों द्वारा ठेका मजदूरों के माध्यम से किया जाता है। निगम के भर्ती नियमों में लोडिंग, अनलोडिंग श्रमिकों की भर्ती का कोई प्रावधान नहीं है। प्रार्थी यूनियन की संविदारत श्रमिकों की समायोजन की मांग अधिनियम के प्रावधान व कॉन्ट्रेक्ट लेबर (आर एण्ड ए) अधिनियम 1970 के विपरीत है। अप्रार्थी निगम में लोडिंग एवं अनलोडिंग का कार्य नियमित कार्य नही है बल्कि आवश्यकता के अनुरूप ठेकेदारों के माध्यम से लोडिंग व अनलोडिंग कार्य कराया जाता है। प्रार्थी श्रमिकगण अप्रार्थी निगम द्वारा नियोजित नहीं किये जाते हैं बल्कि ठेकेदार द्वारा उक्त कार्य हेतु श्रमिक उपलब्ध कराये जाते हैं, जो उनके ही अधीन एवं नियंत्रण में कार्य करते हैं। किसी भी गोदाम में लोडिंग एवं अनलोडिंग हेतु नियमित कर्मचारी नहीं है। ठेकेदार ही श्रमिकों का नियोक्ता है जिन पर नियंत्रण भी ठेकेदार का होता है। अप्रार्थी निगम द्वारा ठेकेदारों को हैंडलिंग व ट्रांसपोर्ट का ठेका दिया जाता था, जो श्रमिक उपलब्ध कराने का नहीं था बलिक ठेकेदार को अपने श्रमिकों से उक्त कार्य पूर्ण कराये जाने का ठेका था। अंत में प्रार्थी यूनियन द्वारा प्रस्तुत क्लेम खारिज किये जाने की प्रार्थना की है। अप्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेष किया गया है–

1. 2001(7) सुप्रीम कोर्ट केसेज 1 स्टील आर्थोरिटी ऑफ इण्डिया बनाम नेशनल यूनियन वाटरफ्रंट वर्कर्स व अन्य।

मैंने उभय पक्षों द्वारा दिये गये तर्कों पर मनन किया तथा उभय पक्षों की ओर से प्रस्तुत न्यायिक दृष्टांतों का ससम्मानपूर्वक अवलोकन व परिशीलन किया।

प्रार्थी यूनियन की ओर से से अप्रार्थी सेन्ट्रल वेयर हाउसिंग कॉरपोरेशन की श्रीगंगानगर व हनुमानगढ स्थित गोदामों में कार्यरत 120 श्रमिकों के अप्रार्थी निगम में समायोजित कर स्थाई कर्मचारियों के समान वेतन व अन्य लाभ दिलाये जाने की मांग की गई है। प्रार्थी यूनियन द्वारा मुख्य रूप से यह तर्क लिया गया है कि अप्रार्थी निगम में लोडिंग व अनलोडिंग का कार्य स्थाई प्रकृति का है, जिसमें प्रार्थी श्रमिकगणों द्वारा गत कई वर्षों से कार्य किया जा रहा है। अतः प्रार्थी श्रमिकगण की समायोजन की मांग उचित एवं वैध है।

न्यायाधिकरण का सर्वप्रथम यह देखना है कि कथित 120 श्रमिकगण औद्योगिक विवाद अधिनियम की धारा 2(एस) के अन्तर्गत श्रमिक की परिभाषा में आते हैं अथवा नहीं? इस संबंध में प्रार्थी यूनियन द्वारा प्रस्तुत न्यायिक दृष्टांत 2011 एआईआर एससीडवल्यू 3455 देवेन्द्र सिंह बनाम मुंनिसिपल कॉरपोरेशन में माननीय पंजाब एवं हरियाणा उच्च न्यायालय द्वारा यह विनिश्चित किया है कि अंशकालिक कर्मचारी, संविदा कर्मचारी, अस्थाई या आकस्मिक कर्मचारी औद्योगिक विवाद अधिनियम की धारा 2(एस) के अन्तर्गत कर्मकार है। धारा 2(एस) की स्पष्ट भाषा में ऐसा कुछ भी नहीं है जिससे यह अनुमान लगाया जा सके कि केवल नियमित आधार पर नियोजित व्यक्ति या पूर्णकालिक नौकरी करने के लिये नियोजित व्यक्ति ही कर्मकार है और जो व्यक्ति निश्चित मजदूरी पर अस्थाई, अंशकालिक, या अनुबंध के आधार पर या आकस्मिक रोजगार के रूप में या निश्चित घंटों के लिये ड्यूटी करने के लिये नियोजित व्यक्ति कर्मकार नहीं है। लेकिन हस्तगत मामले में अप्रार्थी निगम द्वारा प्रार्थी श्रमिकगण को पूर्णकालिक, अंशकालिक, अस्थाई, आकस्मिक कार्य के लिये संविदा पर रखा गया हो, इस संबंध में कोई दस्तावेजी साक्ष्य प्रार्थी यूनियन की ओर से पेश नहीं की गई है जबकि अप्रार्थी निगम द्वारा संस्थान में हैंण्डलिंग एवं ट्रांसपोर्ट वर्क के लिये लाईसेंसधारी ठेकेदारों से किये गये एग्रीमेंट, लाईसेंस आदि की प्रति पेष की गई है, जिसमें उनके द्वारा एक निश्चित अवधि के लिये संस्थान में हैण्डलिंग एवं ट्रांसपोर्ट वर्क का अनुबंध किया गया है। उक्त अनुबंध के तहत ठेकेदार द्वारा कौन–कौन से श्रमिकगणों द्वारा अप्रार्थी निगम में कितनी अवधि के लिये कार्य किया गया, इस संबंध में कोई साक्ष्य प्रार्थी यूनियन की ओर से पेश नहीं की गई है। प्रार्थी यूनियन द्वारा ऐसा भी कोई दस्तावेज पेश नहीं किया गया है कि कथित ठेकेदारों के माध्यम से श्रमिकों की नियुक्ति अप्रार्थी निगम में की गई हो।

न्यायिक दृष्टांत (2003)6 सुप्रीम कोर्ट केसेज 528 भारत हैवी इलैक्ट्रीकल्स लिमिटेड बनाम स्टेट ऑफ यू.पी. व अन्य में माननीय सर्वोच्च न्यायालय द्वारा यह माना है कि जहां नियोक्ता द्वारा ठेकेदार के माध्यम से कामगारों को नियोजित किया गया हो लेकिन उनकी उपस्थिति का रिकार्ड रखा गया हो और उनके काम की निगरानी अपने कर्मचारियों के माध्यम से की गई हो तो ऐसे कामगार नियोक्ता के कर्मचारी माने जायेंगे लेकिन हस्तगत मामले में प्रार्थी श्रमिकगणों की नियुक्ति ठेकेदार के माध्यम से अप्रार्थी निगम में की गई हो और अप्रार्थी निगम द्वारा उनकी उपस्थिति का रिकार्ड रखा गया हो तथा काम की निगरानी भी अप्रार्थी के कर्मचारियों द्वारा की गई हो, इस संबंध में कोई दस्तावेजी साक्ष्य पत्रावली पर उपलब्ध नहीं है। प्रार्थी श्रमिकगण द्वारा अप्रार्थी निगम में लगातार काम किया गया हो, इस संबंध में भी कोई दस्तावेजी साक्ष्य पत्रावली पर उपलब्ध नहीं है जबकि यूनियन की ओर से सचिव श्यामलाल ने स्वयं साक्ष्य के दौरान प्रतिपरीक्षण में स्वीकार किया है कि काम से निकाले जाने के बाद बुलवाने पर ही काम पर जाते हैं। अवकाष के संबंध में कोई दरख्वास्त नहीं देते हैं, लिखित में कोई समझौता नहीं होता है। श्रमिकगण ने 15–20 वर्ष से अप्रार्थी निगम में लोडिंग व अनलोडिंग का कार्य करना बताया है, लेकिन प्रार्थी श्रमिकगण 15–20 वर्ष से अप्रार्थी निगम में नियोजित हो और उनके द्वारा वहां पर लोडिंग व अनलोडिंग का कार्य किया गया है, इस संबंध में कोई दस्तावेजी साक्ष्य पेश नहीं की गई है। प्रार्थी श्रमिकगण को भुगतान अप्रार्थी निगम द्वारा किया गया हो, ऐसा भी कोई दस्तावेज अभिलेख पर नहीं है। प्रार्थी श्रमिकगण द्वारा यह कथन किया गया है कि दिल्ली, बम्बई एवं गुजरात में स्थत गोदामों में एवं आफिस में लोडिंग व अनलोडिंग का कार्य करने वाले नियमित श्रमिक है जिनका ईएसआई व पीएफ भी कटता है, लेकिन इस संबंध में कोई दस्तावेजी साक्ष्य अभिलेख पर पेष नहीं की गई है। श्रमिकगण द्वारा अपनी साक्ष्य के दौरान अप्रार्थी निगम के कर्मचारियों द्वारा उनके कार्य पर नियंत्रण रखा जाना कथन किया है लेकिन इस संबंध में किसी भी कर्मचारी का नाम विवरण उल्लेखित नहीं किया गया है और न ही कोई दस्तावेजी साक्ष्य ही पेश की गई है। जबकि अप्रार्थी निगम की ओर से लाईसेंसधारी ठेंकेदारों के साथ किये गये अनुबंध एवं लाईसेंस आदि की प्रति पेश की गई है तथा बिल मजदूरी के पेटे जो बिल बनाये गये हैं वह भी संबंधित लाईसेंस धारी ठेकेदारों के नाम से हैं, जिनकी प्रति भी अभिलेख पर पेश की गई है। संबंधित ठेकेदारों द्वारा प्रार्थी श्रमिकगणों को अप्रार्थी निगम में लोडिंग व अनलोडिंग कार्य करने के लिये लगातार नियुक्त किया गया हो और उनके द्वारा अप्रार्थी निगम में लगातार काम किया गया हो, इस संबंध में भी कोई दस्तोवज यूनियन की ओर से पेष नहीं किया गया है। अतः यह साबित नहीं होता है कि प्रार्थी श्रमिकगण द्वारा अप्रार्थी निगम में 15–20 वर्ष से लगातार लोडिंग/अनलोडिंग का कार्य किया जा रहा हो। प्रार्थी यूनियन की ओर से कथित ठेका मजदूरों में से केवल 7 श्रमिक साक्ष्य में परीक्षित हुये हैं जिनके द्वारा भी अप्रार्थी निगम में 15–20 वर्ष से लोडिंग/अनलोडिंग का कार्य किया जाना बताया है, लेकिन इस संबंध में कोई दस्तावेज पेष नहीं किया गया है कि उनके द्वारा अप्रार्थी निगम में लगातार निगम के अधीन काम किया गया हो और न ही अन्य श्रमिकगणों के काम करने के संबंध में कोई दस्तावेज अभिलेख पर मौजूद है।

प्रार्थी यूनियन की ओर से जो न्यायिक दृष्टांत पेश किये गये हैं उनमें यही न्यायिक विनिश्चय पारित किया गया है जो यदि कामगार ठेकेदार के माध्यम से मुख्य नियोजक को उपलब्ध कराया गया है और उसके द्वारा मुख्य नियोजक के अधीन लगातार काम किया गया गया है तो वह अधिनियम की धारा 2(एस) के अन्तर्गत श्रमिक की परिभाषा में आता है लेकिन हस्तगत मामले में मुख्य नियोजक अप्रार्थी निगम द्वारा ठेकेदार के माध्यम से कामगार की नियुक्ति नहीं की गई है बल्कि लाईसेंसधारी ठेकेदारों को हैण्डलिंग एण्ड ट्रांसपोर्ट वर्क के पेटे अनुबंध किया जाकर कार्य पूर्ण किये जाने का अनुबंध दिया गया है। प्रार्थी श्रमिकगण द्वारा अप्रार्थी निगम के अधीन अनवरत स्थाई रूप से लगातार काम किया गया हो, इस संबंध में कोई दस्तावेज अभिलेख पर उपलब्ध नहीं है। जबकि अप्रार्थी निगम की ओर से प्रस्तुत गवाहान एवं दस्तावेजी साक्ष्य से एक निश्चित अवधि के लिये कार्य को पूर्ण करने के लिये लाईसेंसधारी ठेकेदारों के माध्यम से कार्य पूर्ण कराय जाना कथन किया है। श्रमिकगणों द्वारा एक कलेण्डर वर्ष में लगातार 240 दिवस कार्य किया गया हो, इस संबंध में भी कोई दस्तावेज पत्रावली पर उपलब्ध नहीं है। ऐसी स्थिति में प्रार्थी यूनियन की ओर से प्रस्तुत न्यायिक दृष्टांतों में प्रतिपादित सिद्धांत हस्तगगत प्रकरण के तथ्यों एवं परिस्थितियों से भिन्नता रखते हैं, जिनसे श्रमिकगण को कोई लाभ नहीं पहुंचता है। उपरोक्त विवेचन के फलस्वरूप प्रार्थी श्रमिकगण द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम स्वीकार किये जाने योग्य नहीं है। निष्कर्षतः प्रकरण में निम्न अवार्ड पारित किया जाता है –

अवार्ड

"The 120 contract labourers (list enclosed) employed since many years at Central Warehousing corporation at Sri Ganganagar & Hanumangarh are not entitled for absorption in employment of Central Warehousing corporation as Workman. The workmen are not entitled to get any relief."

रैफरेंस तदनुसार उत्तरित किया जाता है।

रेखा भार्गव, न्यायाधीश

अधिनिर्णय आज दिनांक 13.12.2024 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

नई दिल्ली, 17 फरवरी, 2025

का.आ. 228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स शातिस प्रभाकर मौले सुरक्षा एजेंसी के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **भुवनेश्वर** के पंचाट (46/2021) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आई आर (बी-I)-08]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.46/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar* as shown in the Annexure, in the industrial dispute between the management of M/s. Shatis Prabhakar Maule Security Agency their workmen.

[No. L-12025/01/2025- IR (B-I)-08]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,

Presiding Officer, C.G.I.T.-cum-LabourCourt,

Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 46/2021

Date of Passing Order – 19th July, 2024

Between:

M/s. Shatis Prabhakar Maule Security Agency,

Contractor RBI, House No. 53,

Plot No. 1537/1538, 1st Floor, Moonlite City,

Kalarahanga, Patia, Bhubaneswar – 751 024.

… 1st Party-Management.

(And)

Shri Kshirod Chandra Parida,

P.O. Saicia, Dist. Jajpur, Pin – 754 292.

… 2nd Party-Workman.

Appearances:

None. … For the 1st Party-Management.

None. … For the 2nd Party-Workman.

ORDER

In the present case, a reference was received from the office of the Deputy Chief Labour Commissioner (Central), Bhubaneswar vide order No. 8(1)/2021-B.IV/Adj/2021-B.I, dated 19.04.2021 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, under the following schedule:-

> "Whether the action of the management of M/s. Satish Prabhakar Mahule Security Agency by terminating the services of Shri Kshirod Chandra Parida without giving termination compensation/benefits is legal &/or justified? If not, what relief the workman is entitled to ?"

2. In the reference order, the Deputy chief Labour Commissioner (Central), Bhubaneswar commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to each one of the opposite parties involved in the dispute.

3. Despite directions so given, no statement of claim is received from the 2nd party-workman.

4. On receipt of the above reference, notice was sent to the 2nd Party-Workman on 20.12.2021 and on dated 03.04.2023 for appearance and for filing of statement of claim. Neither the postal article sent to the 2nd Party-Workman, referred to above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred to above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the 2nd Party-Workman. Despite service of the notice, the 2nd Party-Workman opted to abstain away from the proceedings. No claim statement was filed on its behalf. Thus, it is clear that the 2nd Party-Workman is not interested in adjudication of the reference on merits.

5. Since the 2nd Party-Workman has neither filed statement of claim nor has led any evidence so as to prove its cause against the Management, it is presumed that there is no claim of workman against the Management.

6. In view of such, no claim Order is passed by this Tribunal.

7. Let this order be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 229.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **भुवनेश्वर** के पंचाट (53/2019) प्रकाशित करती है।

[सं. एल - 39025/01/2025- आई आर (बी-I)-01]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.53/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bhubaneswar* as shown in the Annexure, in the industrial dispute between the management of United Bank of India their workmen

[No. L-39025/01/2025- IR (B-I)-01]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Sri Dinesh Kumar Singh,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 53/2019

Filed under Section 2-A(2) of the I.D. Act

Date of Passing Order – 30th September, 2024

Between :-

1. Assistant General Manager (D & IR),
United Bank of India, Head Office, 11,
Hemanta Basu Sarani, Kolkata,
West Bengal, Pin – 700 001.
2. Deputy General Manager, (Credit Monitoring),
United Bank of India, Head Office, 11, Hemanta Basu Sarani,
Kolkatta, West Bengal, Pin – 700 001.

… 1st Party-Managements.

(And)

Gajendra Kumar Mishra,
S/o. Late Baidyanath Mishra, Pravat Lane, Dutta Tota,
P.S. Kumbharapada, PO/Town/Dist. Puri

… Applicant-Workman.

Appearances:

None.	…	For the 1st Party-Managements.
None.	…	For the Applicant-Workman.

ORDER

This is an application of applicant-workman filed under section 2-A(2) of the Industrial Disputes Act (herein-after referred as an "Act").

2. The case of the applicant-workman as per his statement of claim is as follows:-

That he was working in the clerical cadre and subsequently in the year 2005 and he was promoted to the cadre of Scale-I Officer in the Management-Bank. While he was working as Sr. Manager, Ahmedabad Branch, he was placed under suspension on the alleged irregularities at Lanjiberna Branch. The Disciplinary Authority without examining his explanation initiated disciplinary proceeding and in the said disciplinary proceeding he was found guilty and he was dismissed from service. He raised a dispute before the labour commissioner and as no action was taken he preferred this application under section 2-A(2) of the Act. Hence he has filed the present claim petition.

3. A prayer has been made to answer the reference in his favour.

4. The 1st Party-Management has appeared and filed its written statement.

5. The case of the 1st party-Management as per its written statement is as follows:-

That the 2nd party is not a "workman" within the definition of I.D. Act. The Management has also stated in the written statement that the disciplinary Authority of the Management was conducted domestic enquiry as per the principle of natural justice and after duly considered the inquiry report and reply of the 2nd party it has passed a reasoned order in dismissing the 2nd party from service. The 2nd party preferred appeal before the appellate authority and the appellate authority has confirmed the punishment imposed by the disciplinary authority on the 2nd party.

6. The 1st Party-Management has prayed that the statement of claim of the 2nd party-workman may be dismissed as he is not entitled for any relief.

7. When the case was fixed for filing of rejoinder by the applicant-workman and for framing of issues, the 2nd party remained absent and did not participate in the proceedings. It is also revealed from the order-sheet that the applicant workman has not appeared and remained absent in all the dates from the filing of this applicant. However, despite providing a number of opportunities, applicant-workman has not turned up to file rejoinder and to prove his case. As the applicant-workman has not turned up for proving his case, his application filed under section 2-A(2) of the I.D. Act stands dismissed and accordingly a no-dispute order is being passed.

8. Order is passed accordingly.

9. A copy of this Order is sent to the appropriate government for notification as required under section 17 of the I.D. Act, 1947. File is consigned to record room.

Dictated & Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 230.—औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (02/2020) प्रकाशित करती है।

[सं. एल - 12012/32/2019- (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 02/2020) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/32/2019- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 02 OF 2020

Parties : Employers in relation to the management of

1. State Bank of India and

2. M/s. Favourite International

VS

Shri Dipankar Mondal, Workman.

Appearance:

On behalf State of Bank of India: Absent.

On behalf of M/s. Favourite International: Absent.

On behalf of Workman : Mr. Somnath Mukherjee, Ld. Advocate.

Dated: 4th December, 2024

AWARD

By order No. L-12012/32/2019 –IR(B-I) dated 23-12-2019, the Central Government, Ministry of Labour in exercise of power conferred under sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

"Whether the action of the management M/s. Favourite International, Service Provider of State Bank of India in terminating the services of Shri Dipankar Mondal Ex-Housekeeping Employee is legal and/or justified? If not, what relief the workman is entitled to?"

The facts necessary for determination of the present case in brief is that State Bank of India had engaged M/s. Favourite International, a service provider, for supply of men power/ housekeeping staff at its establishment. Accordingly, M/s. Favourite International, the service provider, engaged the concerned workman Shri Dipankar Mondal and deputed him to work as Housekeeping staff at State Bank of India. That as per workman he was initially deputed at R.B.O.-V, Sribridhi Bhavan as Housekeeping staff w.e.f. 13th May, 2015, but he was made to discharge the duty similar to that of a Class-IV subordinate employees of the bank.

That he was transferred to R.B.O.-III at Sribridhi Bhawan on 29th November, 2016 and lastly to S.B.I., Nayabad Branch in South 24 Parganas on 17-04-2017.

That it is the contention of the concerned workman that he was a member of ESIC Scheme. That while deputed at Nayabad Branch, he met with an accident and sustained injury on his left foot on 12-09-2017. That he was treated at Ruby General Hospital and later at ESI Hospital at Sealdah. He was declared fit to join duty on 18-09-2017. That when he went to join his duty, he was prevented. That he was served with a letter dt. 26-10-2017 by his immediate employer imputing false allegations. He replied to such letter on 30-10-2017. Further, he received a letter on 31-10-2017 where he was informed by his employer that his name was struck off from the wage register and his service was terminated.

Thus, he alleged that he had been terminated from the service without giving him an opportunity of being heard and in violation of principal of natural justice. That his termination being illegal he may be reinstated with back wages. He has also prayed for regularisation of his service as an employee of State Bank of India and for other relief.

Record shows initially the case has been contested only by State Bank of India by filing written statement and where it has categorically alleged that the present dispute is not maintainable against it as there exists no relationship of employer and employee between it and the concerned workman. It has alleged that the concerned workman was an employee of its contractor M/s. Favourite International, a service provider. That wages was paid to the concerned workman by the contractor and concerned workman used to work under the control and supervision of the contractor. Therefore, it has prayed for dismissal of the case against it.

The workman in its rejoinder reiterated what he has alleged in his claim application.

However, the bank has failed to pursue with the case and as such it has been proceeded exparte.

Record further shows that immediate contractor employer of the concerned workman failed to put appearance and pursue with the dispute. Therefore, M/s. Favourite International too has been proceeded exparte.

The workman to prove his case has examined himself as W.W.1 and he has produced the following documents:-

1. Copy of conciliation failure report dt.09-10-2019 which has been marked as Exb.W-1.
2. Copy of his transfer order dt.29-11-2016 and 07-04-2017 which have been marked as Exb.W-2 & W-3.
3. Copy of letter dt.26-10-2017 addressed to the workman by M/s. Favourite International which has been marked as Exb.W-4.
4. Copy of show cause notice dt.31-10-2017 which has been marked as Exb.W-5.
5. Copy of reply of the concerned workman dt.30-10-2017 which has been marked as Exb.W-6.
6. Copy of wage slip for the month of May,2017 which has been marked as Exb.W-7.
7. Copy of Gate Pass issued by S.B.I., Zonal Office, South 24 Parganas which has been marked as Exb.W-8 and
8. Copy of letter issued by Regional Manager, SBI which has been marked as Exb.W-9.

The workman has filed written notes of argument and placed reliance on an order passed by the Hon'ble High Court, Karnataka in The Mysore Electrical Industrial Ltd. –vs- Engineering & General Workers Union, in writ petition no.3788 of 2012 and judgement passed by Hon'ble Supreme Court in Mahanadi Coalfields Ltd. –vs- Brajrajnagar Coal Mines Workers' Union, in Civil Appal No.4092-4093 of 2024.

Gone through the oral evidence of concerned workman and the documents produced by him.

The exhibited documents prima facie show that State Bank of India had outsourced the job of housekeeping and maintenance to one M/s. Favourite International. That M/s. Favourite International had deputed the concerned workman Sri Dipankar Mondal as a Housekeeping Staff to S.B.I. That from time to time the workman was transferred to different branches of S.B.I. by his immediate employer M/s. Favourite International.

Thus, from those exhibited documents it is seen that the concerned workman was engaged by M/s. Favourite International as one of its employees. That he was deputed by M/s. Favourite International, to work in the bank sometime in the year 2016 to 2017. However, no documentary evidence whatsoever has been produced by the concerned workman to corroborate his claim that he joined SBI as an employee of M/s. Favourite International in the month of May, 2015.

However, from those exhibited documents it appear that the concerned workman was engaged by M/s. Favourite International for more than 240 days in a calendar year.

Nothing has come on record to prove that concerned workman was engaged directly by S.B.I. against permanent vacant post. In fact notices sent by M/s. Favourite International to the concerned workman prima facie shows that M/s. Favourite International was the controlling and disciplinary authority of the concerned workman or that M/s. Favourite International was his immediate employer. Therefore, it is appears that there exists no direct employer and employee relationship in between the concerned workman and SBI. Thus, the prayer of the concerned workman for absorption as a permanent employee of S.B.I. is not maintainable and tenable.

Be that as it may, as per the schedule of the order of reference this Tribunal is to adjudicate the issue, whether the termination of service of the concerned workman by M/s. Favourite International, a service provider of S.B.I. is legal or not?

That notices issued by M/s. Favourite International upon concerned workman shows that employer had brought an allegation of manipulation of ESIC record and other records by the concerned workman a ground for his termination. Unfortunately, no materials whatsoever have come on record to prove indulgence of concerned workman in manipulation of ESIC records and other records as alleged in Exb.W-5. The conciliation failure report of the Labour Commissioner too is silent with regard to the nature of manipulation and specific documents manipulated by the concerned workman to substantiate the allegation brought by the immediate employer against the concerned workman for his retrenchment. Interestingly, the bank nowhere in its written statement has brought any allegation that while working either as a Housekeeping staff or as a Peon of the bank, the concerned workman had indulged or made an attempt to tamper with the records of the bank.

Nevertheless, the concerned workman having worked for more than 240 days in a calendar year as an employee of M/s. Favourite International, in SBI can be deemed to be in continuous service under M/s. Favourite International, in view of section 25-B of I.D.Act. Therefore, in order to retrench or terminate the service of the concerned workman, M/s. Favourite International ought to have served one month notice of retrenchment with reason. Further, if the concerned workman had indulged in any misconduct and in violation of model standing orders, then M/s. Favourite International ought to have charge sheeted him and ought to have initiated a domestic enquiry on the alleged charge but in the present case M/s. Favourite International has failed to do so. Mere service of notice is not sufficient. The concerned workman should have been given an opportunity of being heard before terminating him from the service and which his immediate employer has failed to do so.

Further, it appears that M/s. Favourite International has failed to comply with the provision of section 25-F of I.D. Act, before termination of the concerned workman from the service. Therefore, the termination of the concerned workman from the serviced by M/s. Favourite International held to be illegal and not justified.

In view of provision of section 25-F of the I.D. Act, the concerned workman is entitled to get compensation from his immediate employer M/s. Favourite International.

Having regards to the discussion made above, M/s. Favourite International is hereby directed to pay compensation of Rs.2,00,000/- (Rupees two Lakh) only to the concerned workman for his illegal termination within three months from the date of publication of this award, i.d. the workman shall be at liberty to get the award executed as per law.

Accordingly, Reference Case no.02 of 2020 is disposed of and an award to that effect is passed.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 231.—औधोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्व रेलवे के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औधोगिक विवाद में केन्द्रीय सरकार औधोगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (47/2014) प्रकाशित करती है।

[सं. एल - 41012/07/2014- (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 47/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Eastern Railway and their workmen.

[No. L-41012/07/2014- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 47 OF 2014

Parties : Employers in relation to the management of

1. Shalimar Labour Contract Co-operative Society Ltd.

2. Eastern Railway

VS

Md. Noorul Haque

Appearance:

On behalf of Shalimar Labour Contract Co-operative Society Ltd.: Absent.

On behalf Eastern Railways : Mr. Abhijit Bhadra, Ld. Advocate.

On behalf of the Workman : Mr. Subhadip Bhattacharjee, Ld. Advocate.

Dated: 21st November, 2024.

AWARD

Ld. Counsels for workman and Eastern Railways are present. None appears from the side of contractor employer Shalimar Labour Contract Co-operative Society Ltd. Record shows the present case has been proceeded exparte against Shalimar Labour Contract Co-operative Society Ltd., the alleged immediate employer of Md. Noorul Haque.

The case is taken up for hearing on the point of maintainability of the present reference against Eastern Railways. Heard Ld. Counsels for workman and Eastern Railways.

Ld. Counsel for Eastern Railways submits that Md. Noorul Haque was an employee of Shalimar Labour Contract Co-operative Society Ltd**.** and not that of Eastern Railways. However, Md. Noorul Haque had filed a case against Eastern Railways for absorption in a regular post in Eastern Railway before Central Administrative Tribunal being No. O.A. 350/768/2020. The said case was disposed of in favour of the workman Md. Noorul Haque on 14-01-2021. That D.R.M., Eastern Railways has been directed to issue order of his regularisation with appropriate benefits at par with Parcel Porter who have been regularised within a period of four weeks form the date of receipt of the order.

Challenging the said order of CAT, Eastern Railways preferred an appeal before the Hon'ble High Court at Calcutta being W.P.C.T. No.47/2021. The Division Bench of Hon'ble High Court has been pleased to affirm the order passed by CAT in favour of Md. Noorul Haque and passed necessary direction upon Eastern Railway to comply with the order of CAT within four weeks from the date of passing of the order on 11-10-2023.

Challenging the order of the Hon'ble High Court, in W.P.C.T. No.47/2021, Railway Authority preferred a Special Leave Appeal being No., 5164/2024 before the Hon'ble Supreme Court. However, Hon'ble Supreme Court has been pleased to dismiss the Special Leave Petition, affirming the order passed by the Hon'ble High Court, Calcutta. Accordingly, Eastern Railways has absorbed the workman Md. Noorul Haque in a permanent regular post of Postal Porter w.e.f.18-02-2024.

Ld. Counsel for Eastern Railways further submitted since Md. Noorul Haque has already been provided with a regular service in Eastern Railways, and as such the present case is not maintainable against it. That Md. Noorul Haque has suppressed the fact about his appointment against a regular post in Eastern Railways before this Tribunal till the Eastern Railways raised an issue of the maintainability of present reference against Eastern Railway. Therefore, he prays for dismissal of reference.

On the other hand Ld. Counsel for workman categorically submitted that the workman has not sought any relief whatsoever against Eastern Railways in the present case. That it has impleaded Eastern Railways as a party as because the then immediate employer of workman was Shalimar Labour Contract Co-operative Society Ltd**.** a contractor of Eastern Railway. He further submits that the contractor has failed to provide compensation in view of provision of section 25-F when the workman was retrenched. The workman having worked for more than 240 days in a calendar year his immediate employer failed to comply the provisions of section 25-F of the I.D. Act. Therefore, he submits that contractor employer Shalimar Labour Contract Co-operative Society Ltd**.** be directed to pay the back wages to the workman for his illegal termination from the date of his termination till his regularisation in the service with Eastern Railways.

Be that as it may, by order No. L-41012/07/2014 –IR(B-I) dated 27-05-2014, the Central Government, Ministry of Labour in exercise of power conferred sub-section 1(d) and sub-section 2(A) of section 10 of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

"Whether the action of the management of Shalimar Labour Contract Co-operative Society Ltd**.** in terminating the service of Md. Noorul Haque is legal and/or justified? If not, what relief the workmen are entitled to?"

It is settled principle of law a Tribunal cannot travel beyond the four corners of the order of reference. It has to confine its decision and judgment only in respect of the issue referred to it. The schedule of the order of reference, already mentioned above, does not speak about the claim of back wages by the workman from its alleged erstwhile employer, a Cooperative Society. Therefore, this Tribunal is not inclined to pass any order in respect of back wages as prayed for by the workman and his Ld. Counsel.

Since Ld. Counsel for Md. Noorul Haque does not claim any relief against Eastern Railway and as such the present case stand dismissed against Eastern Railways.

That as per order of reference only issue that need to be decided by the Tribunal is whether there was any termination of service of Md. Noorul Haque by Shalimar Labour Contract Co-operative Society Ltd**.** and whether such termination was legal or illegal?

The share certificates of Shalimar Labour Contract Co-operative Society Ltd**.** filed by Md. Noorul Haque shows that he was one of the members of the Society. It is true the society is a separate legal entity distinct from its members and if members work for wages for the society they are its employees.

The workman in his claim statement has stated that he worked for Shalimar Labour Contract Co-operative Society Ltd**.** a registered Society since 1996. That he was on leave and on returning from leave on 12-07-2008 he was not allowed to resume his duty. That he was informed by the Secretary of the Society that his service was terminated as per the advice of Howrah Parcel Mazdoor Panchayet President. He requested the authority of the society for revocation of the termination order but in vain. Then he raised a dispute before the Labour Commissioner but could not get any relief and hence this reference.

The Railway contested the claim of the workman by filing a written statement where it has alleged that it has been wrongly impleaded as a party as it never engaged the workman as its employee. That workman was an employee of Shalimar Labour Contract Co-operative Society Ltd**.**

Shalimar Labour Contract Co-operative Society Ltd**.,** the alleged immediate employer, has failed to contest the case and as such it has been proceeded exparte.

However, from the Exb.W-4 it is seen that workman had filed WPCT No.250/2010 before the Hon'ble High Court and Hon'ble High Court was pleased to pass an order in favour of Md. Noorul Haque, Howrah Parcel Handling Contractor Porter regarding permanent service in the Eastern Railway on 05-10-2010 and in view of the order passed by the Hon'ble High Court on 05-10-2010, Md. Noorul Haque was called to appear before screening committee on 27-04-2011 with a direction to produce certain documents mentioned in Exb.W-5. The correspondence Exb.W-13 shows that Railway did not select him for the post.

The other documents lying in the record show that in view of order passed by Hon'ble Supreme Court in W.P. no. 640/2007 and in W.P. No.121/2000 on 22-08-2003 and 10-09-200 has been pleased to pass an order for constitution of a Screening Committee for screening of Parcel Handling Contractors whose names were forwarded by the Asst. Labour Commissioner (Central). That name of Md. Noorul Haque was not listed in the list forwarded by ALC (Central) and as such his case was not considered for absorption by Railway Board. That 312 labourers were absorbed against regular post in view of the order of Hon'ble Supreme Court.

That Md. Noorul Haque being aggrieved had filed another case before the Central Administrative Tribunal being O.A. No.134/2014 and CAT was pleased to pass an order in his favour on 06-02-2014 and which was affirmed by Division Bench of Hon'ble High Court at Calcutta and lastly by Hon'ble Supreme Court and as such at present he has already been absorbed by Eastern Railway.

Be that as it may, Exb.W-4 shows Md. Noorul Haque to be a Parcel Handling Contractor Porter at Howrah. If that be so, a Porter on contract basis cannot demand continuation of his service on expiry of contract and he cannot alleged that he has been terminated or illegally retrenched from the service on expiry of his contract. The Identity Cards issued by Shalimar Labour Contract Co-operative Society Ltd. to him do not ipso facto prove that he was a regular employee of the Society or he used to do porter job exclusively for Shalimar Labour Contract Co-operative Society Ltd**.** as its direct employee and not as its contract porter.

In view of the above, this Tribunal is of view the workman failed to prove his illegal retrenchment by Shalimar Labour Contract Co-operative Society Ltd**.** and not entitled to get any relief as prayed for.

Accordingly, Reference Case no.47 of 2014 is disposed of and an award to that effect is passed.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 232— औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एक्सिस बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय कोलकता के पंचाट (17/2023) प्रकाशित करती है।

[सं. एल - 12025/01/2025- (बी-I)-09]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.17/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata* as shown in the Annexure, in the industrial dispute between the management of Axis Bank Ltd and their workmen.

[No. L-12025/01/2025- IR (B-I)-09]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 17 OF 2023

Parties : Employers in relation to the management of

1. M/s. Orion Security Solutions Pvt. Ltd.

2. Axis Bank Ltd.

VS

Their Workmen

Appearance:

On behalf of M/s. Orion Security Solutions Pvt. Ltd.: Absent.

On behalf of the M/s. Axis Bank Ltd. : Absent.

On behalf of Union : Absent.

Dated: 20th November, 2024

AWARD

Today has been fixed for filing claim statement, list of documents and list of witnesses by workmen i.d. no dispute award, but none appears from the side of the workmen as well as Axis Bank Ltd., like on the previous date. Record shows the present case has been proceeded exparte against the contractor employer M/s. Orion Security Solutions Pvt. Ltd.

Therefore, a presumption can be drawn that principal employer and workmen who have raised the present dispute are no more interested to pursue with the dispute.

Be that as it may, the Dy. Labour Commissioner, Kolkata vide Order No. Kol-700020/09/2023-Dy. CLC (C) dt. 24-08-2023 and in exercise of powers conferred u/s 12(5) read with u/s 10 (2A) of the I.D. Act has referred the following dispute to this Tribunal for adjudication.

"Whether the demand raised by the workmen against the Management of Axis Bank Ltd. and their contractor M/s. Orion Security Solutions Pvt. Ltd. for non-payment of terminal benefit and compensation is fair and justified? If not, what relief the workmen are entitled to?"

Unfortunately, there is nothing in the record save and except the order of reference to adjudicate the above dispute referred by D.L.C., Kolkata. Further, nonappearance of the workmen who have raised the dispute, the principal employer and contractor employer itself prove the matter is either amicably settled outside the Tribunal or the workmen who have raised the dispute are no more interested to pursue with the same.

Under the circumstance this Tribunal has no other option but to pass a "No Dispute Award". Accordingly, Reference No. 17 of 2023 is disposed of by passing a "No Dispute Award".

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एएससी सप्लाई नारायण राजौरी केंद्र शासित प्रदेश जम्मू और कश्मीर के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **चंडीगढ़**-II के पंचाट (40/2023) प्रकाशित करती है।

[सं. एल - 12025/01/2025- (बी-I) -10]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 40/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of ASC Supply Narain Rajouri UT of Jammu And Kashmir and their workmen.

[No. L-12025/01/2025- IR (B-I)-10]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh

(Presided over by Mr. Kamal Kant).

ID No. 40/2023

Registered on:-05.10.2023

Sh. Sanjay Kumar, C/o Kalar, Narain, Rajouri, Jammu and Kashmir-185151.

-------- Applicant

Versus

ASC Supply Narain, Rajouri, UT of Jammu, Jammu and Kashmir.

----Respondents

Present:- None for Workman

None for management.

Award : 06.11.2024

Central Government vide Notification No.08 (13)/online/RLC/Jmu Dated 04.10.2023, under sub-section 5 of Section 12 read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the demand of Shri Sanjay Kumar C/o Narian, Rajouri, UT of Jammu and Kashmir for regularization of his service w.e.f. 12.10.2004 in the ASC Supply, Narian, Rajouri, UT of Jammu and Kashmir is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?"

1. On the receipt of the above reference, notice was sent to the workman as well as to the respondents/managements on 21.11.2023 for 06.02.2024. The notice sent to the workman, referred above, was duly delivered to the workman on 28.11.2023. But no one turned up on behalf of workman 06.02.2024 and reference was adjourned for 04.07.2024. On 04.07.2024, notice was again issued to the workman for 06.11.2024 for appearance and filing claim statement. The said notice was delivered to the workman. Today also no one turned up on behalf of the workman. The workman has been given sufficient opportunities to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor he has filed any statement of claim to prove his case against the respondents/managements, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सतपुड़ा नर्मदा क्षेत्रीय ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (14/2013) प्रकाशित करती है।

[सं. एल - 12025/01/2025- (बी-I) -11]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 14/2013*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Satpuda Narmada Kshetriya Gramin Bank and their workmen.

[No. L-12025/01/2025- IR (B-I)-11]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/14/2013

Present: P.K.Srivastava

H.J.S..(Retd)

Sevak Ram S/o. Late Mani Ram Mehra

R/o. Jhalsir God, Tehsil – Bavai

District – Hoshangabad (MP)

Workman

Versus

The Branch Manager

Satpuda Narmada Kshetriya Gramin Bank,

Semri Harchand Branch

Tehsil – Sohagpur, Distt.- Hoshangabad (MP)

Management

AWARD

(Passed on this 07th day of January-2025.)

The workman has filed this petition u/s. 2-A of the Industrial Disputes (Amendment Act) 2010 against termination of his services by the Bank.

After registering the case on the basis of the petition, notices were sent to management and were duly served on them. They appeared and filed their statements of defense.

The case of the workman, in short, is that he was appointed as a Peon in the Bank on 19.08.2002 on daily wage basis and worked continuously till 01.01.2012. His services were terminated by Bank without any notice or compensation, hence in violation of Section 25-F & 25-G of the Act. He raised a dispute in this respect which could not be conciliated, hence this petition. The workman has prayed that holding the workman entitled to be reinstated, the petition be answered in his favour.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. It is further the case of management that, no illegality was committed in disengaging him.

In evidence, the workman has not filed any affidavit as his examination in chief. He filed certain photocopy documents which are admitted by management. They are certificate of failure of conciliation reply of management before conciliation, replies of Public Information Officer in RTI, denying information sought by him, all admitted by management, marked as with W/1 to W/10.

The workman filed an application seeking direction to management to file payment register and vouchers regarding payment to him. This application was allowed vide order dated 21.06.2016. On 03.02.2017, as the record reveals, the attendance register from 2008 to May 2012 was produced by management before this Tribunal, but since the name of the workman was not found, hence it was returned back to management. Management file as many as 11 payment vouchers, available with them, as stated by them in their affidavit.

Management did not file any other evidence.

None appeared for workman at the time of argument. Learned Counsel for management Shri Ashish Shroti appeared. His arguments were heard and record has been perused by me. None of the parties filed any written arguments.

The initial burden to prove the claim that he worked with the management and the number of days in every year is on workman. He has not filed any affidavit. The payment vouchers indicate about daily payment to the workman and are only 11 in number. On the other hand, there is no evidence by management. Hence, holding that the workman could not successfully prove his claim, the petition deserves to be answered against the workman and is answered accordingly.

ORDER

Petition dismissed. No order as to cost.

DATE: 07/01/2025

P. K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (139/2017) प्रकाशित करती है।

[सं. एल - 12011/27/2016- (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 235—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 139/2017*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/27/2016- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/139/2017

Present: P.K.Srivastava

H.J.S..(Retd)

General Secretary

Dainik Vetan Bhogi Bank Karmachari Sangathan

F-1, Tripti Vihar, Indore Road

Ujjain (M.P.)-456010

Workman

Versus

The Chief General Manager

State Bank of India,

Local Head Office

2nd Floor, 228, Zone-1, MP Nagar

Bhopal (M.P.)-462011

Management

AWARD

(Passed on this 23rd day of December-2024.)

As per letter dated 17/10/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/27/2016/IR(B-I) dt. 17/10/2017. The dispute under reference related to :-

"1. Whether the demand raised by the Union called Dainik Vetan Bhogi Bank Karmachargi Sangathan, Ujjain for payment of Bonus in respect of Mr. Vijay Kaithwas (Daily Wage Worker) by the State Bank of India, LHO, Bhopal for the period from September 2004 to March 2006 and April 2006 to 17.08.2012 is justified or not ? If so, how much bonus amount is actually payable by State Bank of India to Mr. Vijay Kaithwas ?

2. Whether the claim made by Union for payment of bonus to Mr. Vijay Kaithwas for the period from September 2004 to March 2006 and April 2006 to 17.08.2012 is barred by limitation as per Section 21 of Payment of Bonus Act 1965 or not ? "

After registering the case on the basis of the reference, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The case of the workman, in short, is that he was appointed as a Peon in the State Bank of Indore in September 2004 and worked continuously till 17.08.2012. He is entitled to bonus for the period which he was not paid. He raised a dispute in this respect which could not be conciliated, hence this reference. The workman union has prayed that holding the workman entitled to bonus as claimed by him, the reference be answered their favour.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. It is further the case of management that, the State Bank of Indore merged in State Bank of India. According to Bank the claim is barred by Section 21 of Bonus Act.

In evidence, the workman union has not filed any affidavit as examination in chief.

Management has not filed affidavit of its witness as his examination in chief.

None appeared for the workman at argument stage, I have heard argument of learned Counsel Mr. Vijay Tripathi for management.

The initial burden to prove the claim that he worked with the management and the number of days in every year is on workman. He has not produced any evidence in this respect.

Section 21 of Bonus Act provides that any claim for payment of bonus is to be made within one year. Hence the claim of bonus is barred by limitation.

Hence, holding the claim of the workman not tenable in law, he is entitled to no relief, the reference stands answered accordingly.

No order as to cost.

DATE: 23/12/2024

P. K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 236.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (107/2015) प्रकाशित करती है।

[सं. एल - 12012/110/2015- (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.107/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/110/2015- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/107/2015

Present: P.K.Srivastava

H.J.S..(Retd)

General Secretary

Dainik Vetan Bhogi Bank Karmachari Sangathan

F-1, Karmabhoomi, Tripti Vihar,

Opp. Engg. College, Ujjain (M.P.)

Workman

Versus

The Chief General Manager

State Bank of India,

Local Head Office – Hoshangabad Road

Bhopal (M.P.) - 11

Management

AWARD

(Passed on this 23rd day of December-2024.)

As per letter dated 02/11/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/110/2015/IR(B-I) dt. 02/11/2015. The dispute under reference related to :-

"Whether, the demand of union claiming difference of wages in favour of Shri Vijay Kaithwas daily wage employee from Sep. 04 to 17.08.2012 is justified or not ? If so, what relief the daily wager is entitled for ?"

After registering the case on the basis of the reference received, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

In short, the case of the workman side is that he has engaged in the Branch by the Branch Manager on September 2004 as daily wager and worked till 17.08.2012 continuously. His services were terminated by Bank under an oral order without any notice or compensation, which is against Section 25-F & 25-G of the Act, hence against law. He has not paid the workman wages payable to the permanent peon inspite of the fact that the workman and the permanent peon discharged same duties. He has requested that holding the action of management against law, he be held entitled to the same wages admissible to permanent peon.

According to management, the workman was a daily wager who did not work continuously for 240 days in the year preceding the date of his termination. He was a casual labour, engaged as and when required and was paid on daily wages. He is not entitled to parity in wages with permanent staff. Management has requested that the reference be answered against the workman.

In evidence, the workman union filed no affidavit. They did file some photocopy documents, which were not admitted by management, but did not care to prove. Management filed affidavit of its witness as his examination in chief. No cross examination was done by workman side.

None was present for workman side at argument stage. No written argument was filed. Management learned Counsel Shri Vijay Tripathi submitted his oral argument.

I have gone through the record in the light of the arguments.

The reference itself is the issue for determination.

Management has referred to Judgment of Hon'ble the Supreme Court in the case of ***State of Rajasthan Vs. Daya Lal and Others, (2011) 2 SCC 429***, relevant paragraphs are being reproduced as follows :-

This extract is taken from ***State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : 2011 SCC OnLine SC 172 at page 435***

"12. *We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:*

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

See *State of Karnataka* v. *Umadevi (3)* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753], *M. Raja* v. *CEERI Educational Society* [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , *S.C. Chandra* v. *State of Jharkhand* [(2007) 8 SCC 279: (2007) 2 SCC (L&S) 897], *Kurukshetra Central Coop. Bank Ltd.* v. *Mehar Chand* [(2007) 15 SCC 680 : (2010) 1 SCC (L&S) 742] and *Official Liquidator* v. *Dayanand* [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] ."

Another case ***State of Haryana & Others Vs. Tilak Raj and Others, AIR 2007 2658,*** referred to from the side of management, in which the same principle has been reiterated.

Hence, holding the case of the workman union not legal, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 23/12/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 237.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (24/2018) प्रकाशित करती है।

[सं. एल - 12011/35/2017-आईआर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 24/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/35/2017- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/24/2018

Present: P.K.Srivastava

H.J.S..(Retd)

General Secretary

Dainik Vetan Bhogi Bank Karmachari Sangathan

F-1, Karmabhoomi, Tripti Vihar, Opp. Engg. College,

Ujjain (M.P.)

Workman

Versus

The Chief General Manager

State Bank of India,

Local Head Office – Hoshangabad Road

Bhopal (M.P.)

Management

AWARD

(Passed on this 23rd day of December-2024.)

As per letter dated 23/04/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/35/2017/IR(B-I) dt. 23/04/2018. The dispute under reference related to :-

"Whether, the action of the management of State Bank of India to deprive the workman Shri Satish Goswami of permanent status by not issuing appointment letter, paying minimum wages etc. to him is correct ? If not, what other relief he is entitled to ?"

After registering the case on the basis of the reference received, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

In short, the case of the workman side is that he has engaged in the Branch by the Branch Manager on 04.02.2005 as daily wager and worked till 24.01.2011 continuously. His services were terminated by Bank under an oral order without any notice or compensation, which is against Section 25-F & 25-G of the Act, hence against law. He has not paid the workman wages payable to the permanent peon inspite of the fact that the workman and the permanent peon discharged same duties. He has requested that holding the action of management disengaging him against law, he be held entitled to the same wages admissible to permanent peon.

According to management, the workman was a daily wager who did not work continuously for 240 days in the year preceding the date of his termination. He was a casual labour, engaged as and when required and was paid on daily wages. He is not entitled to parity in wages with permanent staff. Management has requested that the reference be answered against the workman.

In evidence, the workman union filed no affidavit. They did file some photocopy documents, which were not admitted by management, but did not care to prove. Management filed affidavit of its witness as his examination in chief. No cross examination was done by workman side.

None was present for workman side at argument stage. No written argument was filed. Management learned Counsel Shri Vijay Tripathi submitted his oral argument.

I have gone through the record in the light of the arguments.

The reference itself is the issue for determination.

Management has referred to Judgment of Hon'ble the Supreme Court in the case of ***State of Rajasthan Vs. Daya Lal and Others, (2011) 2 SCC 429***, relevant paragraphs are being reproduced as follows :-

This extract is taken from ***State of Rajasthan v. Daya Lal, (2011) 2 SCC 429 : (2011) 1 SCC (L&S) 340 : 2011 SCC OnLine SC 172 at page 435***

"12. *We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:*

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such

service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

See *State of Karnataka* v. *Umadevi (3)* [(2006) 4 SCC 1: 2006 SCC (L&S) 753] , *M. Raja* v. *CEERI Educational Society* [(2006) 12 SCC 636 : (2007) 2 SCC (L&S) 334] , *S.C. Chandra* v. *State of Jharkhand* [(2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897] , *Kurukshetra Central Coop. Bank Ltd.* v. *Mehar Chand* [(2007) 15 SCC 680 (2010) 1 SCC (L&S) 742] and *Official Liquidator* v. *Dayanand* [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] ."

Another case ***State of Haryana & Others Vs. Tilak Raj and Others, AIR 2007 2658,*** referred to from the side of management, in which the same principle has been reiterated.

More ever, the Bipartite Settlements protect and apply only with respect to the regular staff with respect to their pay and salary. The Bipartite Settlement does not provide issuing appointment letter to a casual labour/worker. Since, the engagement of the workman was not against any sanctioned post/vacancy and also not after undergoing the recruitment process as per rules, he cannot claim permanent status.

Hence, holding the case of the workman union not legal, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

DATE: 23/12/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 238.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकां और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (52/2012) प्रकाशित करती है।

[सं. एल - 12012/06/2012- आईआर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 52/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/06/2012- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/52/2012

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Laxmi Narayan Yadav

S/o. Late Dauram Yadav

Murrahbhatthi Gandhi Nagar

Gudhiyari, Raipur (C.G.)

Workman

Versus

1. The Zonal Manager
State Bank of India
Byron Bazar, Raipur (C.G.)

2. The Assistant General Manager
State Bank of India,
Regional Office – Raipur (C.G.)

Management

AWARD

(Passed on this 23rd day of December-2024.)

As per letter dated 22/03/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/06/2012/IR(B-I) dt. 22/03/2012. The dispute under reference related to :-

"Whether the action of management of Assistant General Manager, State Bank of India, Regional Office, Raipur in terminating the services of Shri Laxmi Narayan Yadav w.e.f. 15.02.2009 is legal and justified ? To What relief the workman is entitled ?"

After registering the case on the basis of the references received, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The case of the workman, in short, is that he was appointed as a Peon in the then State Bank of Indore at Raipur in its Regional Office on 12.01.2001, as a peon and worked continuously till 12.02.2009. Thereafter, he was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation, in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947). He had worked more than 240 days as required under Section 25-B of the Act, 1947. He worked for 240 days and more in every year continuously and has thus acquired the status of permanent employee. He requested that holding his termination against law, he be held entitled to be reinstated with all back wages and benefits.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. The provisions of the Section 25-F of the Act 1947 is not applicable and therefore, the question of giving notice or payment of retrenchment compensation does not arise. It has been further pleaded that the workman was a daily wager, engaged not on regular basis but subject to availability of work and also that he was not appointed against any sanctioned vacancy following recruitment process. It was also pleaded that since the engagement of the workman was on day to day basis, no formal appointment letter was required to be issued to him. Accordingly, management has prayed that the reference be answered against the workman.

The workman has filed his rejoinder in which he has mainly reiterated his allegations in his statement of claim.

In evidence, the workman has filed his affidavit as his examination in chief, he has been cross examined by management. He has further filed photocopy documents which he did not care to prove. He also filed affidavit of

another Co-worker Nand Lal Yadav as his examination in chief, but could not produced him for cross examination as this witness was reported dead. Management has filed affidavit of its witness S.S. Lal as his examination in chief, who has been cross examined by workman side. Management neither filed any document nor proved.

I have heard argument of Learned Counsel for workman Mr. Y.M. Tiwari and learned Counsel Mr. V.K. Tripathi for management. Both the sides have filed written arguments which are part of record. I have gone through the written arguments filed by management and the record as well.

On perusal of record in the light of rival arguments, following issues arise for determination :-

1) Whether, the workman has successfully proved his continuous engagement for 240 days in an year ?

2) Whether, the disengagement of the workman is legal ?

3) Whether, the workman is entitled to any benefit ?

Issue No.-1 :-

Before, entering into any discussion, Section 25-B of the Act is being reproduced as follows :-

25B. Definition of continuous service.—*For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

The initial burden to prove this issue is on the workman. Pleadings of the parties on this issue have been elaborated earlier. The workman has corroborated his allegations in his statement of claim in his affidavit filed as his examination in chief. In his cross examination, he has stated that he was not sponsored by Employment Exchange, he did not appear in recruitment process, he was not a regular employee, he was paid on daily basis weekly. Also that his services were terminated orally and that no appointment letter was issued to him.

Even if, the photocopy documents filed by workman are looked into though they are not proved as per law, the first document payment details, which is 26 pages does not contain any seal or signature of the management Bank or any other person it appears to be self created documents, hence cannot be relied upon. The second document bonus details within the period 2002 to 2023, 2004 to 2005 and 2005 to 2006 all photocopy show that in none of these years, the workman worked for 240 days. On the other hand, management witness has corroborated the pleadings of management on this point that the workman did not work for 240 days in any year.

Learned Counsel for management has referred to following judgments to support his argument that the burden is on workman to prove his claim that he worked continuously for 240 days in a year. These are :-

Range Forest Officer Vs. S.T. Hadimani (2002) 3 SCC 25

This extract is taken from Range Forest Officer v. S.T. Hadimani, (2002) 3 SCC 25 : 2002 SCC (L&S) 367 : 2002 SCC OnLine SC 226 at page 26

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar [(2001) 9 SCC 713 : 2002 SCC (L&S) 269 : JT (2001) 3 SC 326] . In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

State of Uttarakhand v. Sureshwati, (2021) 3 SCC 108

This extract is taken from *State of Uttarakhand v. Sureshwati,* (2021) 3 SCC 108 : (2021) 1 SCC (L&S) 434 : 2021 SCC OnLine SC 34 at page 117

"25. On the basis of the evidence led before the Labour Court, we hold that the School has established that the respondent had abandoned her service in 1997, and had never reported back for work. The respondent has failed to discharge the onus to prove that she had worked for 240 days in the preceding 12 months prior to her alleged termination on 8-3-2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days in the twelve months preceding the date of her alleged termination on 8-3-2006, which she failed to discharge."

Learned Counsel has also referred to another judgment of Hon'ble the Apex Court in ***Surendra Nagar District Panchayat Vs. Dayabhai Amar Singh, (2005) 8 SCC 750***. The referred paragraphs are being reproduced as follows :-

This extract is taken from Surendranagar District Panchayat v. Dahyabhai Amarsinh, (2005) 8 SCC 750 : 2006 SCC (L&S) 38 : 2005 SCC OnLine SC 1536 at page 759

"16. In Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] (SCC at p. 26, para 3) this Court held that:

"In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

17. *More recently, in Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan [(2004) 8 SCC 161 : 2004 SCC (L&S) 1055] , Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] and M.P. Electricity Board v. Hariram [(2004) 8 SCC 246 : 2004 SCC (L&S) 1092] this Court has reiterated the principle that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.*

18. *In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he had actually worked with the employer for not less than 240 days during the period of twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that the workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement*

and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The courts below have wrongly drawn an adverse inference for non-production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25-F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25-B(1) of the Act. In the facts and situation and in the light of the law on the subject, we find that the respondent workman is not entitled to the protection or compliance with Section 25-F of the Act before his service was terminated by the employer. As regards non-compliance with Sections 25-G and 25-H suffice it to say that witness Vinod Misra examined by the appellant has stated that no seniority list was maintained by the department of daily-wagers. In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority, no relief could be given to him for non-compliance with provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have been proved."

Since, the initial burden to prove, the continuous employment for 240 days in a year as per Section 25-B of the Act, is on workman, his self serving affidavit only cannot be held sufficient that too, when the documents produced militate against the oral statement as mentioned above. Accordingly, the workman is held to have failed in proving his continuous employment for 240 days in a year and issue no.-1 is answered accordingly.

Issue No.-2 :-

Before entering into any discussion on merit, Section 25-F & 25-G of the Act are being reproduced as follows :-

25F. Conditions precedent to retrenchment of workmen.— *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25G. Procedure for retrenchment.— *Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

Case of the workman is that he was not issued any notice of retrenchment nor was he paid compensation, which he has corroborated in his evidence. It is not the case of management that he was paid any compensation or given prior notice. Since, the workman is held to have failed in proving his continuous employment for 240 days in a year, his termination is held not in violation of Section 25-F & 25-G of the Act and issue no.-2 is answered accordingly.

Issue No.-3 :-

In the light of findings recorded above on issue no.-1 and 2, the workman is held entitled to no relief.

Issue no.-3 is answered accordingly.

AWARD

Holding the action of management of Assistant General Manager of State Bank of India, Regional Office Raipur, in terminating the services of Laxmi Narayan Yadav w.e.f. 15.02.2009 legal and justified, he is held entitled to no relief.

No order as to cost.

DATE: 23/12/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (54/2020 & 01/2021) प्रकाशित करती है।

[सं. एल - 12011/20/2020- आईआर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 54/2020&01/2021) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/20/2020- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/54/2020

Present: P.K.Srivastava

H.J.S..(Retd)

Nandram Kure
S/o. Pooran Lal Kure
R/o. 34, Kabirpura, Behind Durga
Mandir, Sahnabad, Bhopal (M.P.)

Workman

Versus

1. **The Deputy General Manager (O&C)**
   State Bank of India,
   Bhopal (M.P.)
2. **The Assistant Manager**
   State Bank of India,
   Main Branch, T.T. Nagar
   Bhopal (M.P.)

Management

AND

CGIT/LC/A/01/2021

Nandram Kure
S/o. Pooran Lal Kure
R/o. 34, Kabirpura, Behind Durga
Mandir, Sahnabad, Bhopal (M.P.)

Workman

Versus

1. **The Deputy General Manager (O&C)**
   State Bank of India,
   Bhopal (M.P.)

2. The Assistant Manager
State Bank of India,
Main Branch, T.T. Nagar
Bhopal (M.P.)

Management

AWARD

(Passed on this 23rd day of December-2024.)

As per letter dated 21/08/2020 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/20/2020/IR(B-I) dt. 21/08/2020. The dispute under reference related to :-

''1- क्या संघ द्वारा दिए गए मांग पत्र के अनुसार श्री नंदराम कुर्रे बोनस संदाय अधिनियम 1965 की धारा 8 व 11 के तहत बोनस राशि पाने की पात्रता रखता है ?

2. क्या उक्त कर्मकार को 01/12/1997 से 31/03/2016 तक की कार्य अवधि का बकाया बोनस राशि का भुगतान किया जाना उचित है ?

3. क्या उक्त कर्मकार Rs. 300 प्रति रविवार की दर से अतिरिक्त कार्य किये जाने का मेहनताना पाने का हकदार है ? यदि हाँ तो उक्त कर्मकार को किस अवधि से अतिरिक्त कार्य के मेहनताने का भुगतान किया जाना चाहिए?''

Workman Nandram Kure has filed the petition against the same management seeking stay of his oral termination by management on 01.09.2021, which was registered as R/01/2021.

After registering the case on the basis of the both the reference and petition, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

During hearing, R/01/2021 was merged with the file of R/54/2020.

The case of the workman, in short, is that he was appointed as a Sweeper in the State Bank of India on 01.12.1997, as a Sweeper and worked continuously till date. There was an understanding reached at between the Union and management that, the wages for cleaning of Bank Campus which is more than 5000 sq.ft. shall be scale wages paid to the regular sweepers. He submitted an application to the management requesting them to pay him scale wages, but management did not consider his this demand. This is also case of the workman that, he is in continuous and regular service of the Bank as cleaner/sweeper since 1997 till date and has worked for more than 240 days in every year inspite of this, his services have not been regularized nor bonus as per Act paid by management. The workman has thus prayed that he be held entitled to scale wages as claimed by him as well as bonus and other service benefits admissible to regular employees.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. It is further the case of management that since 26.06.2009, the work of cleaning of the campus is been taken through outsourcing by different contractors as mentioned in para 6 of the written statement. His wages have also been paid by the contractors and they are liable to pay bonus if any to the workman.

The workman has filed his rejoinder in which he has mainly reiterated his allegations in his statement of claim.

In evidence, the workman has not filed any affidavit as his examination in chief. He has filed some photocopy documents which are Ex. W/1 to W/13. These documents are regarding proceedings before Assistant Labour Commissioner at conciliation stage.

Management has filed affidavit of its witness as his examination in chief. This witness has not been cross examined by workman.

None appeared for the workman at argument stage, I have heard argument of learned Counsel Mr. Praveen Yadav for management.

The initial burden to prove the claim that he worked with the management and the number of days in every year is on workman. He has not produced any evidence in this respect. The management witness has corroborated the case of management in his uncross examined affidavit.

Hence, holding the claim of the workman not proved, he is entitled to no relief, the reference stands answered accordingly.

No order as to cost.

DATE: 23/12/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 फरवरी, 2025

का.आ. 240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन एफ रेलवे के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गुवाहाटी के पंचाट (09/2022) प्रकाशित करती है।

[सं. एल - 12025/01/2025- आईआर (बी-I) -12]

सलोनी, उप निदेशक

New Delhi, the 17th February, 2025

S.O. 240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 09/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Guwahati* as shown in the Annexure, in the industrial dispute between the management of N.F. Railway and their workmen.

[No. L-12025/01/2025- IR (B-I)-12]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, GUWAHATI

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer / Link Officer,
C.G.I.T-cum-L.C., Guwahati.

REFERENCE CASE NO. 09 OF 2022

PARTIES: (1) Parash Balmiki, (2) Pintu Chandra Das, (3) Sumit Chandra Dey,
(4) Krishna Chandra Ghosh, and (5) Bapan Stephan.

Vs.

(1) Management of Northeast Frontier Railway,
(2) Divisional Railway Manager, N. F. Railway, Lumding Division, and
(3) Senior Section Engineer (Loco), N. F. Railway, Badarpur.

REPRESENTATIVES:

For the Workmen: Mr. Parash Balmiki and 4 others (in person).

For the Opposite Parties: Mr. Deepjyoti Das, Advocate (for OP No. 3).

INDUSTRY: Railway.

STATE: Assam.

DATED: 30.10.2024.

AWARD

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Guwahati, vide its Order **No. G/R. 8(07)/2022-CGIT** dated 14.06.2022 has been pleased to refer the following dispute between the employer, that is the (1) Management of Northeast Frontier Railway, (2) Divisional Railway Manager, N. F. Railway, Lumding Division, and (3) Senior Section Engineer (Loco), N. F. Railway, Badarpur Vs. (1) Parash Balmiki, (2) Pintu Chandra Das, (3) Sumit Chandra Dey, (4) Krishna Ch. Ghosh, and (5) Bapan Stephan, their employees for adjudication by this Tribunal.

SCHEDULE

" Whether the action of Divisional Railway Manager, N.F. Railway, Lumding and SSE/Loco/Badarpur, N.F. Railway, Badarpur in terminating the 05(five) non-contractual worker is legal and justified? If not, to what relief the 05(five) terminated/retrench worker are entitled? "

1. On receiving Order **No. G/R. 8(07)/2022-CGIT** dated 14.06.2022 dated 19.10.2020 from the Office of the Deputy Chief Labour Commissioner (Central), Guwahati, Ministry of Labour, Government of India, for adjudication of the dispute, **Reference case No. 09 of 2022** was registered on 27.07.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The aggrieved workmen filed their claim statement through Parash Balmiki on 27.09.2022. The same is endorsed by Mr. Basanta Kumar Kalita, Secretary INTUC, though he was not a noticee in this case. In gist, the facts giving rise to the Industrial Dispute is that the workmen named above were employed by the Senior Section Engineer (Loco), N. F. Railway, Badarpur (hereinafter referred to as SSE(Loco)) for performing the work of Fuel Checker / Fuel Helper as casual workers (non-contractual). They rendered work under the Indian Railways on fixed pay for more than six years and in expectation to become permanent workers in the Indian Railways on fixed pay in terms with Railway Circular No. E/NG/II-71 CL.46 dated 08.06.1981. It is inter-alia stated that the aforesaid workmen were engaged against posts which became vacant due to death or retirement of the permanent railway personnel / employees. The workmen were verbally engaged at a monthly wage of Rs. 6,000/- (Rupees six thousand only) on shifting duties. The payments were made in cash by Opposite Party No. 3. It is the further case of the workmen that Parash Balmiki was employed under Northeast Frontier Railway (hereinafter referred to as N.F. Railway) since July, 2016 and Movement Pass was issued to him in January, 2020. Krishna Chandra Ghosh joined his service in January, 2018 and Movement Pass was issued to him in April, 2020. Pintu Chandra Das joined his service in May, 2016 and Movement Pass was issued to him in July, 2020. Sumit Chandra Dey joined his service in April, 2016 and Movement Pass was issued to him in March, 2020. Bapan Stephen joined his service in May, 2016 and Movement Pass was issued to him in April, 2020. The said workmen were terminated from their service on 03.08.2021 without notice. The terminated workmen have no employment at present and prayed for reinstatement in service with full back wages fixed for casual workers by the Railway Board and Rs. 1,25,000/- (Rupees one lakh twenty-five thousand only) as cost of litigation.

3. After service of Notice Mr. Tamal Sengupta, SSE(Loco) appeared as OP No. 3. In his written statement filed on 09.12.2022 he has contended that he is not a necessary party in the proceeding and the Industrial Dispute is bad in law due to mis-joinder of party. In respect of the claim made by the workmen, OP No. 3 has denied that the workmen were deployed in shift duties under N. F Railway for several years. It is the case of OP No. 3 that he joined as Senior Section Engineer (Loco), N. F. Railway, Badarpur in the month of January, 2020 and there is no record in their office pertaining to the claim of the workmen that they were engaged as Fuel Checker / Fuel Helper as casual worker on a consolidated pay of Rs. 6,000/- per month at various times. Management also denied that the workmen had worked in the post of Fuel Checker / Fuel Helper for more than six years and was not aware about any Circular of the Indian Railways for converting them as permanent employees. It is further denied that the workmen were deployed against vacant posts on the death and retirement of permanent railway employees or were paid at the rate of Rs.6,000/- per month as wages. The specific case of the management is that during the lockdown due to COVID-19, to meet temporary contingency, entry passes were issued to the petitioners for maintaining public utility service of railway operational. It is denied that the workmen were employed on a regular basis, as such their claim against retrenchment is unsustainable. OP No. 3 stated that he is not vested with the authority to appoint any Fuel Checker / Fuel Helper as claimed by the petitioners and he denied that the petitioners were terminated from employment of the Railway. The management representative prayed for striking down his name as opposite party in this case.

4. Several representations were made by the workmen for urgent hearing and the case was specially fixed on 19.09.2024 for evidence of workmen and management witnesses and hearing of argument. Parash Balmiki filed an affidavit-in-chief on behalf of all the petitioners along with some documents which have been marked as Exhibit -1 to 1/6. In the affidavit-in-chief it is stated that in the conciliation proceeding the Assistant Labour Commissioner (Central), Silchar, recorded that Mr. T. Sengupta, SSE(Loco) had stated that there was a shortage of Fuel Checker / Fuel Helper and since no staff were deputed there was a compulsion to engage worker on daily wages to run the train service and workers were hired only on a short-term basis as a daily wage earner. In Paragraph – 5 it is stated that the Identity Cards in the name of the petitioners appeared to have been issued by the contractor firm but no such contractor firm had engaged them or paid them any wages. It is inter-alia stated that the petitioners were terminated by Mr. Tamal Sengupta, SSE(Loco) on and from 03.08.2021. In his evidence-in-chief the witness stated that passes issued to them were prepared by Mr. Tamal Sengupta, SSE(Loco) for the purpose of entry in the Railway premises. Copies of the passes have been marked as Exhibit – 1 series and one essential service pass has been marked as Exhibit – 1/6. He further stated that all five of them are Fuel Checkers of Railway Engine and then went on to say that they were helpers to Fuel Checkers and that except Krishna Chandra Ghosh, who worked as a helper from 2018, all of them have worked for N. F. Railway from 2016 and received consolidated pay of Rs. 6,000/- per month. The witness stated that SSE(Loco) made payment of consolidated wages per month in cash and received their signatures on the Receipt Register. It is stated hat no Notice was served upon them for discontinuation of job for which they raised Industrial Dispute at Silchar and thereafter this Reference has been made. None appeared for the Divisional Railway Manager, N. F. Railway, Lumding Division to cross-examine the witness. The SSE(Loco) was represented by Mr. Deepjyoti Das, learned advocate but declined to cross-examine the workmen witness on the plea that he has filed an application for striking down the name of Tamal Sengupta as opposite party no.3.

5. The short question for consideration is whether the termination of five non-contractual workers is legal and justified? If not, to what relief the terminated / retrenched workmen are entitled.

6. Though the case was fixed up for evidence and hearing of argument on 19.09.2024, after adducing evidence by Parash Balmiki on behalf of the workmen the witness was not cross-examined on behalf of the management of N. F. Railway. No evidence was adduced on behalf of the management of N. F. Railway and no argument was advanced on behalf of any of the parties.

7. Under the given situation it is necessary for this Tribunal to consider the pleadings of the parties and the evidence on record. The Reference has bene made by the Government of India through Deputy Central Labour Commissioner (Central), Guwahati, wherein the parties to the dispute have been mentioned in the Notice. There is no scope of the Tribunal to go beyond the order of Reference and strike down any of the parties. The Tribunal is vested with the jurisdiction only to consider the question referred to it and it would not be legally prudent to transcend the dispute referred. In the claim statement the workmen have stated that they have been working under the management No. 3 for more than 6 years in the post of Fuel Checker / Fuel Helper as casual worker (non-contractual) at a consolidated monthly pay of Rs. 6,000/- and shifting duties were allotted to them verbally. It is an admitted position which may be gathered from Paragraph - 5 of the claim statement that no order of employment was ever issued to them. They were only provided working passes from their resident to work place during the pandemic period of COVID–19 lockdown. In their evidence-in-chief respective date of appointment of the five aggrieved workmen have not been sated. The witness failed to provide any document to substantiate the claim that Rs. 6,000/- was paid to them by the management of N. F. Railway. Pleading of workman is absolute silence regarding performance of continuous service for 240 days in a year by the workmen before their alleged date of termination on 03.08.2021.

8. On perusal of Exhibit W-1, 1/1, 1/2, 1/3, 1/4, 1/5 and 1/6, it appears that Movement Pass were issued to the workmen involved as a Fuel Checker / Fuel Helper, Fueling Point / Helper at BB Loco Wing to perform their duties. The passes were issued on various dates from 30.03.2020 to 14.05.2021. It may be gathered from the pleadings of both the parties that the passes were issued to enable the petitioners to attend the emergency works at the Railway Station Yard at Badarpur during the COVID-19 period. There is no evidence on record to establish that the workmen performed continuous work for over six years or any particular year under the N. F. Railway. There is no order of appointment, placement, disclosing any regular nature of work. Though the management has not come forward to refute the case of the workmen about their engagement at the Railway Loco Yard to carry out the work of Fuel Helper, the pleading and evidence of the workmen are found silent about performing continuous service by them under the N. F. Railway. The petitioners who had worked as Fuel Checker/ Fuel Helper therefore were engaged as daily wage casual labours. There is no evidence on record that they have been engaged against any sanctioned post of the Railway. There is no evidence to prove that the attendance of the workmen was being recorded in the office of the N.F. Railway, Badarpur. Discontinuation of work of the petitioners therefore does not give rise to any right of retrenched workmen under Section 25-F of the Industrial Disputes Act, 1947.

9. Section 25-F of the Industrial Disputes Act, 1947 lays down the conditions precedent to retrenchment of workmen. The provision may be reproduced as follows :

" 25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. "

In the instant case the petitioners have not made any assertion in their pleading that they have rendered continuous work, not less than one year under the employer. Therefore, discontinuation of work of such casual daily wage labour does not create any right of retrenchment benefit or compensation in their favour. Though the management of N.F. Railway has not contested the case by adducing evidence, the petitioners seeking reinstatement and litigation cost are bound to prove their case by adducing positive evidence which is missing.

10. In my considered view the petitioners have miserably failed to establish that they had been continuously engaged by the N.F. Railway or any legal right exists in their favour for the purpose of their reinstatement in service or to receive any retrenchment benefit / compensation. In view of my findings, I hold that the petitioners are not entitled to any relief in this case and the Industrial Dispute is dismissed ex-parte against the OP No. 1 and 2 and on contest against OP No. 3.

Hence,

ORDERED

that the petitioners are not entitled to any relief of reinstatement, retrenchment compensation or litigation cost. The Industrial Dispute is dismissed ex-parte against the OP No. 1 and 2 and on contest against OP No. 3. Let an

Award be drawn up in the light of the above discussion. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer / Link Officer

नई दिल्ली, 18 फरवरी, 2025

का.आ. 241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, बल्ली, हावड़ा; मेसर्स - दिनेशचंद्र आर. अग्रवाल इंफ्राकॉन प्रा. लिमिटेड, नबापल्ली, कोलकाता; मेसर्स-मौर्य एंटरप्राइज़, बाघाजतिन, कोलकाता; श्री गौर गुचैत कंपनी, पश्चिम मेदिनीपुर और मेसर्स- ईगलदीप कोलाघाट-हल्दिया,** के प्रबंधतंत्र के संबद्ध नियोजकों और **पुरबा मेदिनीपुर ज़ेला सुरक्षा सेवा और संबद्ध श्रमिक संघ,** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकाता, पंचाट (संदर्भ संख्या. 25 Of 2019)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.02.2025 को प्राप्त हुआ था।

[सं. एल - 42011/156/2019 -आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 18th February, 2025

S.O. 241.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. **No. 25 Of 2019**) of the **Central Government Industrial Tribunal cum Labour Court, Kolkata,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **National Highways Authorities of India, Bally, Howrah; M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., Nabapally, Kolkata ; M/s. Maurya Enterprise, Baghajatin, Kolkata ;Mr. Gour Guchait Co., Paschim Medinipur and M/s. Eagledeep Kolaghat-Haldia, and Purba Medinipur Zela Security Service & Allied Workers Union,** which was received along with soft copy of the award by the Central Government on 18.02.2025.

[No. L-42011/156/2019 -IR (DU]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer

REF. NO. 25 OF 2019

Parties : Employers in relation to the management of

1.National Highways Authorities of India, Bally, Howrah,

2.M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., Nabapally, Kolkata- 107.

3.M/s. Maurya Enterprise, Baghajatin, Kolkata- 92,

4.Mr. Gour Guchait Co., Paschim Medinipur and

5.M/s. Eagledeep Kolaghat-Haldia.

VS

Purba Medinipur Zela Security Service & Allied Workers Union.

Appearance:

On behalf National Highways Authorities of India, Bally, Howrah : Absent.

On behalf of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., Nabapally, Kolkata- 107: Absent.

On behalf of M/s. Maurya Enterprise, Baghajatin, Kolkata- 92 : Mr.Affan Ali, Ld. Advocate.

On behalf of Mr. Gour Guchait Co., Paschim Medinipur : Mr. Affan Ali, Ld. Advocate.

On behalf of M/s. Eagledeep Kolaghat-Haldia : Absent.

And

On behalf of Purba Medinipur Zela Security Service & Allied Workers Union: Mr. Uddipan Banerjee, Ld. Advocate.

Dated: 6th February, 2025

AWARD

As per record, initially the Central Government, Ministry of Labour was pleased to refer the present case for adjudication of dispute with regard to alleged termination of four workmen to this Tribunal vide order No.L-42011/156/2019-IR (DU) dated 02-12-2019. Subsequently, the Ministry of Labour, by issuing corrigendum letter dt.05-06-2023, amended the number of alleged terminated workmen from 4 to 7. The schedule of corrigendum reference read as follows:-

"Whether action of the management of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., contactor of NHAI, Howrah in terminating the service of 7 workers (as per list attached), as raised by Purba Medinipur Zela Security Service & Allied Workers Union, is proper, legal and justified? If not, what relief the disputant workers are entitled to and what direction, if any, are necessary in the matter?"

The facts that have been gathered from the pleadings of the parties and from both oral and documentary evidence are, NHAI had engaged M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. for supply of men power for surveillance over road accident or for accident management on the national highway in a stretch between Kolaghat to Haldia during the relevant period.

It further appears that M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. instead of carrying out the tendered job by itself had engaged a sub-contractor named M/s. Maurya Enterprise and who too in turned had engaged another sub-contractor named Mr. Gour Guchait for discharging the tendered job. All the workmen were engaged by Mr. Gour Guchait

That on expiry of contract period between NHAI and M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., the former has engaged M/s. Eagledeep Kolaghat-Haldia, for operation and maintenance of national highway in between Kolaghat and Haldia w.e.f. September, 2017. That on engagement of Eagledeep Kolaghat Haldia, for the concerned tender work, it has refused to absorb those eight contractor employees engaged earlier by Mr. Gour Guchait. Such facts appear to be the germination of the present dispute.

However, the union in its claim application has alleged it is a registered trade union affiliated with CITU and it represents the Security Workers and Allied Workers in Security Service throughout the District of Purba Medinipur. That seven workmen named in the list and Avijit Mal, since deceased, were engaged by Mr. Gour Guchait who was a contractor engaged by National Highway Authority of India, M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. and M/s. Maurya Enterprise to keep a watch on the National Highway from Kolaghat to Haldia on 01-01-2015. Their duty was to assist the accident victims and shift them to the hospital and to remove carcass from the road.

Those workmen discharged their duty honestly, sincerely and diligently but they were not provided with any basic facility to which an ordinary workman is entitled to. Thus, those workmen placed their demand for basic facility before the concerned contractors. Surprisingly, the concerned employer suddenly stopped payment of their wages w.e.f. 08-04-2016 and restrained them from attending their duty. That those workmen approached the union to mitigate their grievances of illegal termination. The union took up the matter with the Assistant Labour Commissioner (Central).

That at the time of hearing before the Labour Commissioner, the union has come to know that M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. has verbally engaged M/s. Maurya Enterprise as its sub-contractor and M/s. Maurya Enterprise, verbally handed over the concerned project work to Mr. Gour Guchait.

Somehow, the conciliation failed. Surprisingly, Conciliation Officer in his failure report failed to mention the names of M/s. Maurya Enterprise and Mr. Gour Guchait. Therefore, the union moved the Hon'ble High Court in writ jurisdiction by filing writ petition no.1474 (W) of 2019 for insertion of the names of those two contractors namely M/s. Maurya Enterprise and Mr. Gour Guchait. Such writ petition was disposed on 13-03-2019 with a direction to the Asst. Labour Commissioner (Central) to consider the application of the petitioner for inserting the names of Opposite Party no.3 and 4 named above, but Asst. Labour Commissioner (Central) failed and as such the union once again moved another writ petition being No. 13043(W) of 2019 and which was disposed of on 19-07-2019 with a direction to Asst. Labour Commissioner (Central) to consider the applications of the petitioners for incorporating the names of two contractors. Accordingly, Asst. Labour Commissioner (Central) complied.

The workmen have alleged that they have been terminated from the service without issuing any show cause, charge sheet, without holding any domestic enquiry and without complying the provisions of section 25-F of I.D.Act. Therefore, they have prayed that the termination may be declared illegal and for reinstatement with full back wages.

The record shows principal employer, National Highway Authority of India, its contractors M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. and M/s. Eagleddep Kolaghat Haldia OMT Project Pvt. Ltd. have failed to appear and contest the case and as such the present case has been proceeded exparte against them.

That M/s. Maurya Enterprise and Mr. Gour Guchait contested the claim by filing joint written statement where they have alleged that each and every workman has a distinguish case and as such their individual case cannot be raised by a union. Thus, the claim statement filed by the union is not maintainable.

That none of them have received any written work orders for executing the work of NHAI from their immediate vendor. The work entrusted to them was controlled by M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. That they took the contract for a very limited period from August, 2015 to February, 2016 i.e. for less than six months and engaged less than seven persons for execution of the job sourced out to them. Thus, they have alleged those concerned workmen never worked for them for more than 240 days in a year. Those workmen cannot be considered to be in continuous service under them/sub-contractors.

That those seven persons have worked for intermittent period during their contract period of six months and question of retrenchment without notice and holding departmental enquiry do not arise and the question of reinstatement with back wages will not arise. Therefore, they prayed for dismissal of the reference.

The union in its rejoinder has reiterated what it has alleged in its original claim statement.

Record shows, union has examined Sri Ashis Kumar Doloi, President of Union as W.W. No.1. Unfortunately, those two contesting sub-contractor employers have failed to pursue with the case since 05-06-2024 and failed to examine W.W.1. Accordingly, they have been proceeded exparte.

Union has got the following documents as exhibit through W.W.1:-

1. Copy of applications filed by workmen namely Sri Laltu Sarma, Sri Bijal Kumar Maity, Sri Nilkanta Bera, Sri Nityananda Midya, Sri Dipanjan Maity, Sri Prasenjit Das Adhikary, Sri Abhijit Mal and Sri Bikash Dhara before ALC (C), Kolkata with copy to all the employers and which have been marked as Exb.W-1 to W-1/7.
2. Copy of letters dt. 22/27-02-2017 and 10-03-2017 of A.L.C. (C), Kolkata to Project Director, NHAI, M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., Mr. Ramanand Maurya of M/s. Maurya Enterprise and Mr. Gour Guchait and which have been marked as Exb.W-2 and 2/A.
3. Copy of adjournment application dt. 20-03-2027 filed by Mr. Gour Guchait before ALC (C) and which has been marked as Exb.W-3.
4. Copy of letter dt.27-03-2016 of Project Director, Calcutta-Haldia Port Road Co. Ltd., a subsidiary of NHAI to M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. in respect of termination of service of Bikash Dhara, Prasenjit Das Adhikary and Abhijit Mal and which has been marked as Exb.W-4.
5. Copy of letter of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. to Asst. Labour Commissioner (Central) dt.18-07-2017 informing the latter that workmen B. K. Maity, N. M. Midya, N. Bera, D. Maity and L. Sarma were employees of its sub-contractor M/s. Marya Enterprise and which has been marked as Exb.W-5.
6. Copy of M/s. Maurya Enterprises' letter dt.24-07-2017 to Asst. Labour Commissioner (Central), informing the latter that it took contract on and from 19-06-2015 to 31-05-2017 from M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. verbally and which was subject to renewal every three months and on the same term he handed over the work to Mr. Gour Guchait, another sub-contractor and which has been marked as Exb.W-6.
7. Copy of Union's letter to Asst. Labour Commissioner (Central) dt.01-09-2017 and where union had alleged that contractors of NHAI may change but same set of workmen continue to discharge perennial nature of job of NHAI and as such requested the latter to direct M/s. Eagle Infra India Ltd. to absorb /reinstate the old workmen and to make M/s. Eagle Infra India Ltd. as a party to the conciliation proceeding and which has been marked as Exb. W-7.
8. Copy of letter of M/s. Eagledeep Kolaghat-Haldia OMT Projects Pvt. Ltd. to Asst. Labour Commissioner (Central) dt.18-12-2017, informing that it is not possible for it to reinstate six workers namely B. K. Maity, Bikash Dhara, Nityananda Midya, Abhijit Mal, Nilkanta Bera and Dipanjan Maity, employees of ex-contractor M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. as it has already employed its own workmen for the tendered job and which has been marked as Exb.W-7/A.
9. Copy of two failure reports of Asst. Labour Commissioner (Central) dt.09-04-2018 and 20-09-2019 forwarded to the Secretary, Ministry of Labour for necessary step and which have been marked as Exb.W-8 and W-8/A.
10. Two copy of letters of union dt.06-07-2018 and 01-10-2018 both addressed to Asst. Labour Commissioner (Central) for corrigendum in the case No.5/44/2017/E-3 for inclusion of two service providers namely Mr. Gour Guchait and Mr. Ramananda Marya of M/s. Marya Enterprise as parties to the proceeding and which have been marked as Exb.W-9 and Exb.W-9/A.

Union has also filed written notes of argument.

It is necessary to mention here, that Mr. Affan Ali, Ld. Advocate of Mr. Gour Guchait and M/s. Marya Enterprise, suddenly put his appearance on 05-02-2025 after 23-04-2024 and that too on the date, the case was fixed for hearing exparte argument. Ld. Advocate on record for reasons best known to him or to his both clients have all on a sudden stopped appearing before the Tribunal and pursue with the hearing from after 23-04-2024. That he had put appearance almost ten months and wants to take the clock back and render him to cross examine the union's witness. Such prayer not supported by sufficient cause has been rejected.

Now, let me see whether there was indeed illegal termination of service of the seven workmen by their employer?

Except what has been stated with regard to the employment of those seven workmen in the project work of NHAI by its contactors or sub-contractors in the claim statement nothing has come on record to corroborate the statement made in the claim statement, such as their attendance sheet, wage slips or any such document from where it can be ascertained their actual date of employment and actual date of termination as alleged or the nature of job for which they were engaged, whether they were engaged to do perennial nature of job or seasonal nature of job or casual nature of job as a daily wager. The union in its claim statement has stated their job was accident management on national highway in between Kolaghat to Haldia i.e. to assist the accident victims and shift them to the hospital and to remove carcass from the road. Such nature of job does not appear to be perennial in nature to this Tribunal.

Further, nothing has come on record to show their exact period of engagement either by the contractor or sub-contractor of NHAI. From contents of Exb.W-7 andW-7/A written by the concerned union and M/s. Eagledeep Kolaghat Haldia OMT Project Pvt. Ltd. to ALC (C), it appears that on engagement of M/s. Eagledeep Kolaghat Haldia OMT Projects Pvt. Ltd. by NHAI for operation and maintenance of Kolaghat Haldia road upto 53.472 k.m., on the expiry of tenure of agreement NHAI had with M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., then the employees of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., through their union, had requested M/s. Eagledeep Kolaghat Haldia OMT Projects Pvt. Ltd. to take them in service and which was turned down by M/s. Eagledeep Kolaghat Haldia OMT Projects Pvt. Ltd. as it had already employed its own employees for the awarded work.

It is the case of the union that those workmen worked under different contractors of NHAI engaged for same nature of job, but the union has failed to produce any document to show engagement of the concerned workman by different contractors of NHAI on different period of time for discharging same nature of job.

That apart, this Tribunal is of view a workman who is engaged in a project work by a contractor of principal employer, then such workman is presumed to have knowledge that his job is only for the limited period or till the completion of project, for which the contract was granted to his immediate employer and as such he cannot claim right to continuity in the service or cannot say that his service has been terminated on the expiry of period of contract or completion of project.

Further, this Tribunal is of view, if the contract of the immediate/contractor employer comes to an end on the expiry of the period of contact, then service of the contractor's workmen too comes to an end in the establishment of the principal employer. Therefore, employees of the contractor cannot say that they have been illegally retrenched or terminated from the service in the establishment of the principal employer by their immediate employer, the contractor whose contract has come to an end on the expiry of period of contract. Such facts stand corroborated by the contents of Exb.W-7/A and which prove on expiry of contract between NHAI and its contractors M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., former has engaged another contractor named M/s. Eagledeep Kolaghat Haldia OMT Projects Pvt. Ltd. for maintenance and operation of Kolaghat Haldia National Highway No.41 sometime in the year 2017.

The union in its claim statement has alleged that seven workmen were retrenched from the service by the sub-contractors of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd. by stopping payment of their wages and preventing them from joining the duty on and from 08-04-2016. Unfortunately, such was not the case of the union before the ALC (C), Kolkata in a conciliation proceeding raised by it sometime in the year 2017.

The contents of Exb.W-7, Exb.W-7/A already discussed above and Exb.W-8 and W-8/A, the two failure reports submitted by the Conciliation Officer, invariably project demand of union for re-engagement of the employees of sub-contractors of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., erstwhile contractor of NHAI by new contractor M/s. Eagledeep Kolaghat Haldia OMT Projects Pvt. Ltd. It was not the case of the union before ALC that those seven workmen were retrenched by the sub-contractor of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., erstwhile contractor of NHAI in the month of April, 2016 by preventing them to join duty or stopping their wages. Thus, it appears union has made out a case of termination in the year 2016 for the purpose of the present case.

In view of the above, this Tribunal holds that there was no termination of service of the seven workmen as alleged by their immediate employer in the year 2016 rather the documents prove that on engagement of a new contractor by NHAI, the new contractor refused to engage erstwhile employees of erstwhile contractor of NHAI. On such refusal by new contractor to engage old employees then union has raised present industrial dispute by bringing a baseless case of termination.

Therefore, it is held that there was no termination of service of seven workmen by M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., a contractor of NHAI or by the sub-contractors of M/s. Dineshchandra R. Agarwal Infracon Pvt. Ltd., rather their service period limited to the period of contract had come to an end on the expiry of period of contract between the principal employer and its immediate contractor. Thus, the workmen are not entitled to get any relief in the form of reinstatement, back wages or any compensation as stipulated u/s 25-F of the I.D. Act.

Accordingly, Reference Case no.25 of 2019 is dismissed and an award to that effect is passed.

Justice K. D.BHUTIA, Presiding Officer

नई दिल्ली, 19 फरवरी, 2025

का.आ. 242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**- I के पंचाट (81/2019) प्रकाशित करती है।

[सं. एल - 39025/01/2024- आईआर (बी-I) -51]

सलोनी, उप निदेशक

New Delhi, the 19th February, 2025

S.O. 242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.81/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-I* as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen.

[No. L-39025/01/2024- IR (B-I)-51]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. Brajesh Kumar Gautam, Presiding Officer, Chandigarh.

ID No.81/2019

Registered On:-17.12.2019

Sandeep Kumar S/o Sh. Jai Pal R/o H.No.230 Village Bhabhat, Zirakpur, Mohali Punjab.

.....Workman

Versus

1. Indian Bank, Zonal Office, Vigilance Cell, SCO 190-192, Sector 7 C, Chandigarh through its Zonal Manager.
2. Mr. Dinesh Kumar Zonal Manager, Zonal Office, Vigilance Cell, SCO 190-192, Sector 7 C, Chandigarh.

.....Respondents

Dr. Naresha Nand AR for Workman

Sh. Tribhavan Singh AR for Management

(Subsequently Management proceeded Ex-parte)

Judgment reserved on 19th November, 2024

Judgment Pronounced on 06th December, 2024

JUDGMENT/ AWARD

1. Present Petition is an Industrial Dispute filed under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter called the Act) by the workman Sh. Sandeep Kumar, challenging his termination order dated- 30-11-2017 with a prayer to reinstate the workman with back wages.

2. **The case of Workman/ Petitioner-** the brief facts of the case as unfolded from the claim statement are that the workman joined the service of Indian Bank as Clerk on 24.06.2013 and was posted at Manimajra Branch on 05.07.2013 and at the time of termination he was doing duty of Cashier with the Indian Bank, Manimajra Branch, U.T. Chandigarh. The further case of petitioner is that he was charged by the disciplinary authority that while performing duties as cashier at the Branch he misappropriated Rs.1000/- when one Mr. Santosh (an employee of M/s Atul Jewelers) came to deposit Rs,.20,000/- on 07.06.2016. It was alleged that said Mr. Santosh was pressurized by the petitioner to fill up a fresh pay in slip for Rs.19,000/- and counterfoil for Rs.19,000/- was given after misappropriating Rs.1000/-. When the matter was reported to Branch Manager by the customer the Branch Manager further reported same to Zonal Office, Chandigarh. It is alleged that CCTV footage showed that misappropriated money blown up with the Air pressure of the fan and it was stuck near the computer monitor and when the customer left the counter same was kept in cash drawer by the petitioner. The further allegation against petitioner was that he did not report excess cash at the end of the day and pocketed excess Rs.1000/- violating the guidelines and this way a loss to bank reputation was caused by the petitioner. It was further alleged that ultimately petitioner refunded said Rs.1000/- when he was shown CCTV footage. In response to above mentioned charges petitioner file its reply denying these charges. A vigilance officer visited the Branch on 08.06.2016 and an investigation was done. The further case of petitioner is that the disciplinary authority not being satisfied with the reply of petitioner initiated a departmental enquiry by appointing Sh. S.K. Lahan Chief Manager, Zonal Office, Indian Bank, Chandigarh as Enquiry Officer and Sh. Rajinder Kumar Manager, Zonal Office, Chandigarh was appointed as presenting officer. After completion of departmental enquiry, the enquiry officer submitted his enquiry report to the disciplinary authority vide its report dated 16.06.2017. As per enquiry report submitted by enquiry officer all charges against the petitioner were found proved. The Disciplinary authority thereafter issued a show cause notice to petitioner vide letter dated 16.11.2017, proposing a penalty of removal from service. The petitioner was directed to appear in person on 18.11.2017 before the disciplinary authority but the petitioner sought 15 days time for preparing and submitting his reply to the show cause. No response to request for extension of time was received by petitioner, however, he submitted his reply on 29.11.2017. Finally the disciplinary authority vide its order dated 30.11.2017 imposed the punishment of dismissal without notice under Clause 6 (A) of the Memorandum of Settlement on disciplinary action and procedure therefor dated 10.04.2002 as amended from time to time. The dismissal order was sent to the petitioner vide letter No.ZO:CHD:VIG:SSA-1B/2017-18 dated 30.11.2017 by the Chief Manager (HRM) Zonal Office, Indian Bank, Chandigarh.

The petitioner preferred an Intra Bank Appeal before Appellate Authority Indian Bank, Corporate Office, Chennai and requested for a personal hearing. A personal hearing was offered at the corporate office of the bank at Chennai after a gap of about 10 months i.e. on 22.10.2018. Ultimately the Appellate Authority confirmed the punishment passed by disciplinary authority without considering the facts and circumstances and without application of Judicial mind and rejected the appeal vide order dated 09.01.2019. After rejection of appeal by the disciplinary authority the petitioner approached Assistant Labour Commissioner, Kendriya Sadan, Sector 9-A, Chandigarh for Conciliation Proceedings through Bank Employees Union President as an Industrial Dispute between Indian Bank Employees Union and Disciplinary Authority Indian Bank, Zonal Office, Chandigarh. The Indian Bank through its Deputy Zonal Manager, Chandigarh submitted its reply before the Assistant Labour Commissioner justifying the orders of Disciplinary Authority and that of Appellate Authority. Ultimately Conciliation proceedings resulted in failure and a certificate No.7(11)/2019/ACH/C.III dated 16.09.2019 was issued enabling petitioner to file Industrial Dispute before this Court. The petition raising present Industrial Dispute was Therefore filed on 17.12.2019 and was registered as ID No.81/2019.

4. **The case of Management-** In response to notice issued to the Respondent-Bank Management appeared and filed its written statement/ reply to the petition of workman. It may be pointed out here that the respondents left taking proper steps in the present proceeding and ultimately vide order dated 15.04.2024 the case was directed to be proceeded ex-parte against the management as on repeated dates none turned up for cross examination of the workman.

5. According to case of respondents because of apparent misconduct committed by workman/ applicant he was dismissed from service of bank after holding a detailed departmental enquiry. According to further case of respondents after appreciation of facts and based on enquiry report the disciplinary authority passed order of dismissal which was confirmed in appeal before the Appellate Authority. According to the case of respondents the conduct/ omission and commissions found proved against applicant were of very serious in nature involving misappropriation of money and therefore the punishment awarded was correct and in accordance

with the legal provisions. It has been denied by management that applicant workman became aware about blown currency note of Rs.1,000/- only when CCTV footage was shown to him. The workman himself has admitted his guilt of misappropriating Rs.1000/- and there was no explanation as to why there was Rs.1000/- in excess. According to respondents the CCTV Footage clearly shows that applicant-workman kept Rs.1000/- currency note in cash drawer and thereafter, he did not report that there was an excess of amount and this clearly shows malicious intention on the part of applicant workman. According to the case of the respondent the punishment of dismissal has been passed as per clause 6 (A) of Memorandum of Settlement and Disciplinary Action and procedure dated 10.04.2002. The applicant workman failed to uphold the integrity and honesty expected form an employee of Public Sector Bank. The action of the workman was prejudiced to the interest of bank. According to the case of management it is wrong to say that without giving proper opportunity in the enquiry and without hearing the appellant workman he was dismissed from the service. The workman/ applicant could not brought any material or evidence calling for an interference at the appellate stage as well. The Disciplinary authority has exercised its discretion judiciously and passed speaking order. The punishment imposed upon the management is logical, rational and proportionate to the gravity of misconduct found proved against applicant of the workman. According to respondents the petition of applicant-workman is liable to be dismissed with cost.

6. **Issues:** On the basis of pleadings of the parties following issues are framed to be decided in the present case-

i. **Whether in the departmental enquiry charges against the delinquent employee-workman/ applicant was proved and whether the departmental enquiry conducted was in violation of principle of natural justice?**

ii. **Whether the dismissal of applicant-workman Sh. Sandeep Kumar is illegal and same has been passed without application of Judicious mind?**

iii. **Whether workman-applicant is entitled for reinstatement with back wages?**

iv. **What other relief if any in the facts and circumstances of the case?**

7. **Evidence:** During the trial proceedings of present case on behalf of petitioner/ workman, the petitioner Sandeep Kumar himself has been examined as witness PW-1 and several documents are marked as exhibit P-1 to P-24 as follows:

Particulars	**Exhibits**
Copy of Charge-Sheet dated 16.09.2016	Ex.P-1
Copy of Letter dated 05.10.2016	Ex.P-2
Copy of Explanation Letter dated 02.07.2016	Ex.P-3
Copy of Reply dated 07.07.2016 to Explanation Letter	Ex.P-4
Copy of Enquiry Order dated 16.02.2017	Ex.P-5
Copy of CCTV Footage dated 07.06.2016	Ex.P-6
Copy of Enquiry Proceedings dated 27.02.2017	Ex.P-7
Copy of Enqiry Proceedings dated 03.03.2017	Ex.P-8
Copy of Written Brief of the Enquiry Proceedings dated 15.03.2017	Ex. P-9
Copy of Summing up of the Enquiry dated 07.04.2017	Ex.P-10
Copy of Findings of Enquiry Officer Sh. S.K. Lahan dated 16.06.2017	Ex.P-11
Copy of Representation Letter dated 22.06.2017	Ex.P-12
Copy of Letter dated 16.11.2017	Ex.P-13
Copy of Letter dated 17.11.2017	Ex.P-14
Copy of Letter dated 29.11.2017	Ex.P-15
Copy of Dismissal Order dated 30.11.2017	Ex.P-16
Copy of Appeal dated 26.12.2017	Ex.P-17
Copies of Submission by the For Workman dated 22.10.2018	Ex.P-18

Copy of Proceedings of Personal Hearing dated 22.10.2018	Ex.P-19
Copy of Order of Appellate Authority dated 09.01.2019	Ex.P-20
Copy of conciliation proceedings dated 10.06.2019	Ex.P-21
Copy of Letter dated 23.08.2019	Ex. P-22
Copy of Letter dated 09.09.2019	Ex. P-23
Copy of Order 16.09.2019	Ex. P-24

8. As stated here in above when no proper steps were being taken on behalf of Respondent-Bank Management, ex-parte proceeding was directed against the respondent and on behalf of respondent neither oral nor documentary evidence were produced.

9. **Argument on behalf of Workman-Applicant:** It has been submitted by Ld. Counsel appearing on behalf of petitioner-workman that during the enquiry the customer who had deposited the money on 07.06.2016 was not examined to support the allegation as to whether he had tendered Rs.20000/- for deposit or it was only Rs.19000/- which was infact deposited. It is also argued that even no written complaint was there on behalf of customer Mr. Santoshi an employee of M/s Atul Jewelers. It is specifically argued that in the dismissal order there is reference that petitioner workman had appeared before disciplinary authority on 18.11.2017 but fact remains that he had sought a time for preparation and appearance before the disciplinary authority on the later date. It is also argued that wrong fact has been mentioned in the dismissal order that petitioner had accepted his guilt of misappropriation of Rs.1000/- on the alleged date of occurrence and it is also wrongly stated that workman had apologized his mistake. The Ld. Counsel for Workman has also placed his reliance on certain reported decisions which are- decision of Hon'ble Allahabad High Court dated 19.09.2021 in ***Civil Writ Petition No.53781 of 2011 titled as Anil Kumar Vs Assistant General Manager***, Judgment of Kerala High Court dated 04.12.2021 passed in ***WP (C No.13955 of 2017) titled as State Bank of India Vs Central Government Industrial Tribunal & Ors.*** None turned up on behalf of respondent to make any submission. It may be noticed that respondent is already proceeded ex-parte.

10. **Finding:** Points No**.(i)-** Whether in the departmental enquiry charges against the delinquent employee-workman/ applicant was proved and whether the departmental enquiry conducted was in violation of principle of natural justice?

(ii) -Whether the dismissal of applicant-workman Sh. Sandeep Kumar is illegal and same has been passed without application of judicial mind?

These two points for determination are interconnected and therefore, these are taken together. The enquiry report has been brought on the record and same is exhibited as Ex.P-11/ PW-1. Perusal of this enquiry report shows that during the enquiry Sh. A.K. Singh AGM/BM, Indian Bank, Manimajra has been examined as Management witness and CCTV footage dated 07.06.2016 (the date of alleged incident) has been produced as documentary evidence during the said enquiry. It further appears from the perusal of enquiry proceeding contained in Ex.P-7, Ex.P-8 that certain queries were put up during the enquiry proceeding on 27.02.2017 in which charge sheeted employee (Sandeep Kumar) admitted receiving charge sheet, enquiry order dated 16.02.2017 and one Sh. R.K. Gulati President of Indian Bank Employees Union was permitted to work as defense representative on behalf of delinquent employee Sandeep Kumar during further query put up the delinquent employee Sandeep Kumar has denied accepting the charges which were served upon him.

Mr. Rajinder Kumar the presenting Officer had supplied list of witnesses and documents and as per the list only one witness Sh. A.K. Singh was to be examined and as documentary evidence CCTV Footage of Branch Cash Cabin of dated 07.06.2016 (date of incident) were proposed to be adduced during the enquiry. On 27.02.2017 during enquiry proceeding Sh. A.K. Singh has been examined as management witness. Evidence of this witness is contained in Ex.P-8/ PW1. He has deposed that he was present in the Branch on 07.06.2016. He has further stated that one Mr. Santosh an Employee of M/s Atul Jeweler had made complain that he deposited Rs.20,000/- but cashier told that it was only Rs.19,000/-. Here it is important to be noted that no any such complaint as stated by this witness Sh. A.K. Singh has been brought on the record which was made before Sh. A.K. Singh AGM/BM of Manimajra Branch. It is also not clear from the evidence of Sh. A.K. Singh as to whether said complaint was oral or it was in writing. If it was oral it was required to be clearly stated in the evidence of Sh. A.K. Singh and if it was written complaint it was necessarily to be produced during the enquiry. In further evidence Sh. A.K. Singh- the Management witness has stated that Mr. Santosh (the Depositor of money) informed Sh. Raj Kumar the proprietor of M/s Atul Jewelers and Raj Kumar sent his son to the Branch who handed over a complaint letter and CCTV Footage was replayed. In the said CCTV Footage it was seen that a Rs.1000/- note had blown with the fan air pressure and had gone near the monitor that is why there was shortage of Rs.1000/- and after sometime the same Rs.1000/- note was collected by cashier and kept in the cash drawer. In further evidence Mr. A.K. Singh the then Branch Manager (Management witness) has stated that on 08.06.2016 the CCTV Footage recording was again played before investigating officer from Zonal Office and

customer was called to the Branch and Rs.1000/- was refunded by Mr. Sandeep Kumar to the customer. In the cross examination when management witness Sh. A.K. Singh was asked as to he himself had noticed delinquent employee Sh. Sandeep Kumar pocketing any currency note on 07.06.2016, Mr. A.K. Singh the Management witness had replied in negative. Remarkably the complaint letter which was handed over by son of Sh. Raj Kumar (the proprietor of M/s Atul Jeweler) were not produced during the enquiry and even Mr. Santosh the employee of M/s Atul Jeweler who had visited the Branch for depositing Rs.20,000/- on 07.06.2016 had not been examined to prove the allegation that he had actually handed over Rs.20,000/- to the cashier but cashier reported that it was only Rs.19,000/-. So far as CCTV Footage is concerned according to Management witness in the CCTV Footage it was seen that Rs.1,000/- note had blown and stuck near the Monitor of Cash Cabin. Only because a Rs.1000/- note was seen blown by air and stuck near the monitor in the cabin it cannot be taken to be proved that this single note was part of Rs.20,000/- which was allegedly handed over by the Depositor in absence of further corroborative evidence. There is no evidence produced during enquiry on the point that Santosh the Depositor of Money had actually handed over Rs.20,000/- to the cashier. Even proprietor of M/s Atul Jeweler or his son who had handed over letter of complaint to Branch Manager have not been also examined to prove the fact that they had sent Mr. Santosh an employee of M/s Atul Jeweler to deposit Rs.20,000/- and in absence of substantive evidence on this point, it can't be said that it was proved that Mr. Santosh had actually handed over Rs.20,000/- to the cashier (the delinquent employee) who told him it was only Rs.19,000/- and had pressurized Mr. Santosh to fill up a new pay-in-slip/ deposit Challan for Rs.19,000/-. In the enquiry report there is also no finding that how it was proved by enquiry officer that Sandeep Kumar the delinquent employee had compelled Mr. Santosh the Depositor to fill up a revised deposit challan.

11. The very genesis of the allegations against petitioner/ workman had been misappropriation of Rs.1,000/- from the cash deposit of Rs.20,000/- by Mr. Santosh who was employee of M/s Atul Jewelers appears not proved for the reason stated here in above. So far as argument on behalf of petitioner in not providing sufficient opportunity during enquiry is concerned it may also be seen from the enquiry proceeding itself that soon after recording of evidence of management witness it has been asked from defense side whether they want to produce any defense witness and were upon defense side stated that I do not need to produce any witness. The another point which has been raised by Ld. Counsel for petitioner that a wrong observation has been recorded in dismissal order dated 30.11.2017 (Ex.P-16) that delinquent Sandeep Kumar presented himself for personal hearing on 18.11.2017 but he had not appeared on that date and infact he had prayed by filing an application before disciplinary authority seeking extension of time on 17.11.2017. It is clear from the letter dated 16.11.2017 of Disciplinary Authority contained in Ex.P-30/ PW-1 that after completion of Departmental Enquiry Sandeep Kumar the delinquent employee which served with the show cause proposing punishment of removal from service with superannuation benefits and direction to appear on 18.11.2017 for personal hearing was given. It is further clear that Sandeep Kumar had prayed 15 days time for submitting his reply through his letter dated 17.11.2017 addressed to Disciplinary Authority contained in Ex.P-14. There appears no communication in this regard as to what happened on application for extension of time filed by Sandeep Kumar. Apparently the submission of Ld. Counsel for the workman is found correct that he did not present himself before Disciplinary Authority for personal hearing on 18.11.2017 as directed in the letter dated 16.11.2017 of the disciplinary authority and it has been wrongly observed in dismissal order dated 30.11.2017 that Sandeep Kumar presented himself for personal hearing on 18.11.2017. The another anomaly which can be traced in the dismissal order is regarding material difference between proposed punishment contained in letter dated 16.11.2017 and the final punishment is passed without assigning any reason as to why proposed punishment for which a show cause notice was given to Sandeep Kumar was changed from "Removal from service with superannuation service" to "dismissal without notice" under Clause 6 (A) of the Memorandum of Settlement on Disciplinary Action and procedure therefor. On this account also the dismissal order appears not good in law and apparently has been passed without analysis of enquiry report and without application of judicial mind over it. I have already stated here in above in this Judgment that in absence of substantive evidence during the enquiry the charges that on the date of alleged incident 07.06.2016 Sandeep Kumar the delinquent employee has misappropriated Rs.1000/- from the cash deposit tendered by one Sh. Santosh and that he failed to refund and report the access cash to the Branch Manager, was not found proved, therefore, the disciplinary action in dismissing the delinquent employee Sh. Sandeep Kumar from the service based upon such departmental enquiry is bad in law and has been passed without application of judicial mind.

12. **Points** (iii) Whether workman-applicant is entitled for reinstatement with back wages?

(iv) What other relief if any in the facts and circumstances of the case?

These two points are also interconnected and therefore these are taken together. While deciding Points No.(i) & (ii) here in above in this Judgment a clear finding has been recorded that in the enquiry report charges were not proved for want of substantive evidence and therefore the order of dismissal based on that Departmental Enquiry is bad in law. Dismissal from service is a major punishment and it should not be passed lightly without there being strong substantive evidence to support the allegation/ charge against a delinquent employee. Remarkably the management bank has left defending its action during present proceeding before this Court and it appears that one of the reason may be that management was unable to defend its action. Whatever evidence has been produced on the record on behalf of workman-applicant Sh. Sandeep Kumar remained intact as respondent bank management could not controvert the evidence produced before this Court during present proceeding. Consequently the petitioner/ workman Sandeep Kumar is entitled for the relief prayed in the present case. The dismissal order dated 30.11.2017 passed by

Disciplinary Authority Indian Bank Zonal Office, Chandigarh is liable to be set aside and petitioner Sandeep Kumar is entitled for reinstatement will all consequential benefits.

13. In the light of discussion made herein above and in the facts and circumstances of the present case, it is-

ORDERED

That the present ID No.81/2019 titled as Sandeep Kumar Vs Indian Bank & Anr. is allowed. The dismissal order dated 30.11.2017 contained in Annexure A-15 (Ex.P-16/PW1) to claim petition is set aside. Order of Appellate Authority contained in Annexure A-18 (Ex.P-20/PW1) dated 09.01.2019 to claim petition is also set aside. The respondents are directed to reinstate the applicant-workman Sh. Sandeep Kumar with all consequential past benefits from the date of his dismissal from service.

14. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

Dated: 06.12.2024

B. K. GAUTAM, Presiding Officer

नई दिल्ली, 19 फरवरी, 2025

का.आ. 243—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (38/2016) प्रकाशित करती है।

[सं. एल - 12012/23/2016- आईआर (बी- II)]

सलोनी, उप निदेशक

New Delhi, the 19th February, 2025

S.O. 243—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 38/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen.

[No. L-12012/23/2016- IR (B- II)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/38/2016

Present: P.K.Srivastava

H.J.S..(Retd)

Deepak Bagdre

S/o. Anand Rao Bagdre

Mukan, PO: Jhallar, Tehsil - Bhainsadehi

Betul (M.P.)-460226

Workman

Versus

The Regional Manager

Central Bank of India

Regional Office – P.B. No. 13,

Narsinghpur Road, Chitnavisganj

Chhindwara (M.P.)-480002.

Management

AWARD

(Passed on this 31st day of December-2024.)

As per letter dated 31/03/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12012/23/2016/IR(B-II) dt. 31/03/2016. The dispute under reference related to :-

"Whether the action of the management of Central Bank of India in terminating the services of workman Shri Deepak Bagdre C/o. Shri Anand Rao Bagdre w.e.f. 31.10.2008 without following the provisions of I.D. Act, is justified ? If not, what relief the workman is entitled for ?"

After registering the case on the basis of the references received, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The case of the workman, in short, is that he was appointed as a Sweeper in the then Central Bank of India in its Jhallar Branch on 01.04.2004 and worked continuously till 31.01.2008. Thereafter, he was terminated without notice or wages in lieu of one month notice and without payment of retrenchment compensation, in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act, 1947). He had worked more than 240 days as required under Section 25-B of the Act, 1947. He worked for 240 days and more in every year continuously and has thus acquired the status of permanent employee. It has also been alleged that daily wagers later appointed were absorbed by Bank. He requested that holding his termination against law, he be held entitled to be reinstated with all back wages and benefits.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. He never worked continuously for 240 days in any year. This is also the case of management that the daily wagers who had worked for at least 45 days in a year were given opportunity to participate in the recruitment process; the workman also participated in the recruitment process, but could not succeed. The provisions of the Section 25-F of the Act 1947 is not applicable and therefore, the question of giving notice or payment of retrenchment compensation does not arise. It has been further pleaded that the workman was a daily wager, engaged not on regular basis but subject to availability of work and also that he was not appointed against any sanctioned vacancy following recruitment process. It was also pleaded that since the engagement of the workman was on day to day basis, no formal appointment letter was required to be issued to him. Accordingly, management has prayed that the reference be answered against the workman.

The workman has filed his rejoinder in which he has mainly reiterated his allegations in his statement of claim.

In evidence, the workman has filed his affidavit as his examination in chief; he has been cross examined by management. He has further filed photocopy documents and proved which are Ex. W/1 letter by Branch Manager to Regional Manager sent on 19.12.2011 by which the application and documents of the workman were forwarded. Ex. W/2, W/3 are two certificates issued by management, certifying that the workman worked as daily wager in 2006, 2007, 2004 and 2005. Management has filed affidavit of its witness Manoj Kumar as his examination in chief, who has been cross examined by workman side. Management neither filed any document nor proved.

I have heard argument of Learned Counsel for workman Mr. Ashok Shrivastava and none appeared for management. I have gone through the record as well.

On perusal of record in the light of arguments, following issues arise for determination :-

1) Whether, the workman has successfully proved his continuous engagement for 240 days in an year ?

2) Whether, the disengagement of the workman is legal ?

3) Whether, the workman is entitled to any benefit ?

Issue No.-1 :-

Before, entering into any discussion, Section 25-B of the Act is being reproduced as follows :-

25B. Definition of continuous service.—*For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

The initial burden to prove this issue is on the workman. Pleadings of the parties on this issue have been elaborated earlier. The workman has corroborated his allegations in his statement of claim in his affidavit filed as his examination in chief. In his cross examination, he has stated that he was not sponsored by Employment Exchange, he did not appear in recruitment process, he was not a regular employee, he was paid on daily basis weekly. Also that his services were terminated orally and that no appointment letter was issued to him.

Even if, the photocopy documents filed and proved by workman are looked into they reveal that the workman worked for 83 days in 2006, 74 days in 2007, 48 days in 2004 and 89 days in 2005 as it is disclosed from Ex. W/2 & W/3. According to Ex. W/1 the workman worked for 134 days in 2011. On the other hand, management witness has corroborated the pleadings of management on this point that the workman did not work for 240 days in any year which is supported by the documents of workman himself as mentioned above.

Range Forest Officer Vs. S.T. Hadimani (2002) 3 SCC 25

This extract is taken from Range Forest Officer v. S.T. Hadimani, (2002) 3 SCC 25 : 2002 SCC (L&S) 367 : 2002 SCC OnLine SC 226 at page 26

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar [(2001) 9 SCC 713 : 2002 SCC (L&S) 269 : JT (2001) 3 SC 326] . In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

State of Uttarakhand v. Sureshwati, (2021) 3 SCC 108

This extract is taken from *State of Uttarakhand v. Sureshwati*, (2021) 3 SCC 108 : (2021) 1 SCC (L&S) 434 : 2021 SCC OnLine SC 34 at page 117

"25. On the basis of the evidence led before the Labour Court, we hold that the School has established that the respondent had abandoned her service in 1997, and had never reported back for work. The respondent has failed to discharge the onus to prove that she had worked for 240 days in the preceding 12 months prior to her alleged termination on 8-3-2006. The onus was entirely upon the employee to prove that

she had worked continuously for 240 days in the twelve months preceding the date of her alleged termination on 8-3-2006, which she failed to discharge."

Surendra Nagar District Panchayat Vs. Dayabhai Amar Singh, (2005) 8 SCC 750. The relevant paragraphs are being reproduced as follows :-

This extract is taken from Surendranagar District Panchayat v. Dahyabhai Amarsinh, (2005) 8 SCC 750 : 2006 SCC (L&S) 38 : 2005 SCC OnLine SC 1536 at page 759

"16. In Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] (SCC at p. 26, para 3) this Court held that:

"In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

17. *More recently, in Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan [(2004) 8 SCC 161 : 2004 SCC (L&S) 1055] , Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195 : 2004 SCC (L&S) 1062] and M.P. Electricity Board v. Hariram [(2004) 8 SCC 246 : 2004 SCC (L&S) 1092] this Court has reiterated the principle that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.*

18. *In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he had actually worked with the employer for not less than 240 days during the period of twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that the workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The courts below have wrongly drawn an adverse inference for non-production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25-F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25-B(1) of the Act. In the facts and situation and in the light of the law on the subject, we find that the respondent workman is not entitled to the protection or compliance with Section 25-F of the Act before his service was terminated by the employer. As regards non-compliance with Sections 25-G and 25-H suffice it to say that witness Vinod Misra examined by the appellant has stated that no seniority list was maintained by the department of daily-wagers. In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority, no relief could be given to him for non-compliance with provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have been proved."*

Since, the initial burden to prove, the continuous employment for 240 days in a year as per Section 25-B of the Act, is on workman, his self serving affidavit only cannot be held sufficient that too, when the documents produced militate against the oral statement as mentioned above. Accordingly, the workman is held to have failed in proving his continuous employment for 240 days in a year and issue no.-1 is answered accordingly.

Issue No.-2 :-

Before entering into any discussion on merit, Section 25-F & 25-G of the Act are being reproduced as follows :-

25F. Conditions precedent to retrenchment of workmen.— *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period

of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25G. Procedure for retrenchment.— *Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

Case of the workman is that he was not issued any notice of retrenchment nor was he paid compensation, which he has corroborated in his evidence. It is not the case of management that he was paid any compensation or given prior notice. Since, the workman is held to have failed in proving his continuous employment for 240 days in a year, his termination is held not in violation of Section 25-F & 25-G of the Act and issue no.-2 is answered accordingly.

Issue No.-3 :-

In the light of findings recorded above on issue no.-1 and 2, the workman is held entitled to no relief.

Issue no.-3 is answered accordingly.

AWARD

Holding the action of management of Central Bank of India in terminating the services of workman Shri Deepak Bagdre S/o. Shri Anand Rao Bagdre w.e.f. 31.10.2008 legal and justified, he is held entitled to no relief.

No order as to cost.

DATE: 31/12/2024

P. K .SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 फरवरी, 2025

का.आ. 244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **बैंक** ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (12/2021, 51/2020) प्रकाशित करती है।

[सं. एल - 12011/11/2020- आईआर (बी- II)]

सलोनी, उप निदेशक

New Delhi, the 19th February, 2025

S.O. 244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 12/2021,51/2020*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen.

[No. L-12011/11/2020- IR (B- II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/12/2021

NO. CGIT/LC/R/51/2020

Present: P.K.Srivastava

H.J.S..(Retd)

1. CASE NO. CGIT/LC/RC/12/2018

Pankaj Badli Sepoy,

Bank of India, Branch Badnagar,

District Ujjain (M.P.)

Through: General Secretary,

Dainik Vetanbhogi Bank Karamchari Sanghatan,
F-1, Trupti Vihar, Indore Road,
Ujjain (M.P.) - 456010 **Workman**

Versus

The Zonal Manager,
Bank of India,
2-C, Shipra Vihar, Nagzhiri,
Ujjain (M.P.) **Management**

&

2. CASE NO. CGIT/LC/R/51/2020

The General Secretary,
Dainik Vetanbhogi Bank Karamchari Sanghatan,
F-1, Trupti Vihar, Indore Road,
Ujjain (M.P.) - 456010 **Workman**

Versus

The Zonal Manager,
Bank of India,
2-C, Shipra Vihar, Nagzhiri,
Ujjain (M.P.) **Management**

AWARD

(Passed on this 30th day of December-2024.)

Before the reference was received, the workman filed petition U/S. 2-A (2&3) of the Industrial Disputes Act 1947 with regard to the same dispute. The management also appeared and filed its written statement of defense. This case was registered as **RC/12/2018.**

In case no. R/51/2020, The Government of India, Ministry of Labour & Employment, vide Letter No L-12011/11/2020 (IR(B-II) dt. 10/06/2020 has sent following reference for adjudication –

"Whether the demand of Dainik Vetan Bhogi Bank Karmachari Sangathan for reinstatement of Shri Pankaj Singh, Daily Wage Employee, Badnagar Branch, Bank of India, Ujjain terminated from the service on 11.07.2017 and for payment of bonus for the period from April, 2012 to 11.07.2017 is legal & justified? If so, what relief the said daily wager is entitled for?"

Since parties in both the cases are one and same, also the facts/pleadings are identical in both the cases, hence both the cases were consolidated by order dated 14.03.2022 and RC/12/2018 was made the leading case and they are being disposed by common Judgment/award with the consent and concurrence from both the sides.

After registering the cases on the basis of the reference received, notices were sent to the parties and were duly served on them. Parties appeared and have filed their respective statements of claim and defence.

Thereafter the workman appeared in the initial stages of the proceedings of this Tribunal but never turned up to file any evidence in this Tribunal. Management also did not file any evidence.

I have perused the records. The reference is itself the issue. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not filed any evidence, in the absence of any evidence in support of holding the claim of workman not proved the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

No order as to cost.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

DATE: 30/12/2024

नई दिल्ली, 19 फरवरी, 2025

का.आ. 245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **बैंक** ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (112/2015, 06/2015) प्रकाशित करती है।

[सं. एल - 12011/67/2015- आईआर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 19th February, 2025

S.O. 245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.112/2015,06/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen.

[No. L-12011/67/2015- IR (B-II)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/112/2015

Present: P.K.Srivastava

H.J.S..(Retd)

General Secretary

Dainik Vetan Bhogi Bank Karmachari Sangathan

F-1, 'Karmabhoomi', In Front of Tripti Vihar Engg.

College, Ujjain (M.P.)

Workman

Versus

The Dy. General Manager

UCO Bank,

Regional Office – 380, Saket Nagar

Indore (M.P.)

Management

AND

CGIT/LC/RC/06/2015

Ravindra Raishwal

S/o. Madan Lal

53/5, Pardeshipura,

Indore (M.P.)

Workman

Versus

The Dy. General Manager

UCO Bank,

Regional Office – 380, Saket Nagar

Indore, (M.P.)

Management

AWARD

(Passed on this 06th day of January-2025.)

As per letter dated 05/11/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-12011/67/2015/IR(B-II) dt. 05/11/2015. The dispute under reference related to :-

''क्या दैनिक वेतनभोगी बैंक कर्मचारी संघ द्वारा श्री रविन्द्र रैशवाल को दैनिक वेतन भोगी (भृत्य) के रूप में यूको बैंक शाखा आनंद बाजार, इंदौर द्वारा दिनांक 23.06.2011 से प्रतिवर्ष 240 दिन से अधिक कार्य करना बताकर दिनांक 18.11.2014 से बिना सूचना, नोटिस पगार व छंटनी मुआवजा दिये बैंक से पृथक कर देने के कारण पुर्ननियुक्त की मांग न्यायोचित है। यदि हां तो श्री रविन्द्र रैशवाल किस अनुतोष के भागी है।''

The workman also filed a petition against termination of his services by the same management which was registered as RC/06/2015.

After registering the case on the basis of the reference and petition, notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

Since, pleadings and facts with respect to both the cases were one and same, also the cause of action was same, hence both the cases were consolidated and proceeding were conducted in case R/112/2015.

The case of the workman, in short, is that he was appointed as a Peon in the UCO Bank on 23.06.2011 and worked continuously till 18.11.2014. His services were terminated by Bank without any notice or compensation, hence in violation of Section 25-F & 25-G of the Act. He raised a dispute in this respect which could not be conciliated, hence this reference. The workman union has prayed that holding the workman entitled to be reinstated, the reference be answered in his favour.

The case of the management, inter alia, is that the alleged workman was neither employed as permanent employee nor attained permanent status. He worked as a casual worker for few hours in a day as and when required in branch of the Bank and was paid for it. It is further the case of management that, no illegality was committed in disengaging him.

In evidence, the workman has filed affidavit as his examination in chief. Management was given opportunity to cross examined him, but did not avail. Workman side further filed certified statement of account of the workman between 01.01.2011 to 31.12.2014.

Management has not filed affidavit of its witness as his examination in chief.

Learned Counsel for workman Shri Arun Patel submitted his arguments. None appeared for management.

The initial burden to prove the claim that he worked with the management and the number of days in every year is on workman. He has filed his affidavit which is uncross examined by management. Contents of his affidavit are further supported by certified statement of account of the workman admissible in law. On the other hand, there is no evidence by management.

From the uncontroverted affidavit of the workman, corroborated by certified statement of account, prove the fact of his continuous employment as mentioned in Section 25-B of the Act for 240 days in every year including the year preceding the date of his termination. This evidence also supports his allegation that he was not paid any compensation nor was issued any notice by management on his disengagement.

Hence, holding the allegations of the workman proved, the action of management in terminating his services is held arbitrary and against law.

As regards, the relief admissible to him in the light of finding above noted, keeping in view the fact that he was casual daily labour, not employed following recruitment procedure against any sanctioned vacancy/post, a lump sum compensation quantified at Rs. 2,00,000/- in lieu of all his claims will meet the ends of justice.

In the light of above finding the reference as well the petition is answered as follows :-

AWARD

Holding the action of management of UCO Bank in terminating the services of Ravindra Raishwal against law, he is held entitled to Rs. 2,00,000/- as lump sum compensation in lieu of all his claims to be paid to him by management of UCO Bank within 60 days from the date of notification of Award, failing which interest @ of 6% p.a. from the date of Award, till payment. No order as to cost.

Copy of this Judgment be placed on the file of RC/06/2015.

DATE: 06/01/2025

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 फरवरी, 2025

का.आ. 246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल, डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **सुश्री जी कुमारी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 5/2011) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/1/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 246.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 5/2011) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Ms.G. Kumari, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/1/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 12th day of February, 2025

INDUSTRIAL DISPUTE No. 5/2011

Between:

Ms.G. Kumari,

D/o Shri B. Papa Rao,

D.No.8-4-76, Damampeta Street,

Itchapuram Post,

Srikakulam – 532312. ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/ 1/2010-IR(DU) dated 25.3.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Superintending Engineer(Civil), BSNL, Civil Circle, Visakhapatnam in terminating the services of Ms. G. Kumari w.e.f 01.09.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 5/2011 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that under an application she was selected and appointed as Clerk cum Typist with the employer w.e.f. 1.3. 1996 on wages of Rs.1200/- per month and that stand posted to work under the Sr. Divisional Engineer, B.S.N.L, Sub-Visakhapatnam and the nature of duties were clerical that includes maintenance of all records, registers and statements and further authorized to receive the salaries of the concerned, M.Os, registered letters addressed to the divisional officer etc., and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that she was doing was perennial in nature and that while she was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on her part she was terminated from service unceremoniously w.e.f. 01.09.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. Employer has maintained attendance register for the first two years of the employment of the workman subsequently gave up the practice. It is submitted that during that period the workman got so many employment opportunities but she remained back with the employer owing to the assurance given by the concerned authority that her services could be absorbed and permanency be granted with higher benefits than the one she could get elsewhere. The alleged name as "Contract Labour" is only sham and nominal. It is a camouflage to prevent the workman from claiming the benefits of Labour Laws that are applicable in the circumstances. Ipso facto there is no mediator in the matter of either appointment of the workman or her continuance of the service with the employer. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and she is the bread winner to the large family. It is submitted that the workman in toto rendered 14 years of unblemished service to the employer straining herself from dawn to dusk with a fond hope that in all just and fairness that her services could be continued till she attains superannuation. But, services of workman were uninterrupted It is further submitted that she raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. 01.09.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that she is also entitled for absorption with the employer in lieu of the nature and length of service she rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed and that the salary was fixed at Rs.1200/- per month and that she worked for 10 to 12 hours per day is also denied. Suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. That she worked for 240 days uninterruptedly and she was working w.e.f. 1.3.1996 to 1.9.2009 is also denied. That Respondent had given any assurance to the claimant is denied. It is denied that identity card was issued to her and issued service certificate also. It is submitted that the contention of claimant that she was shown a contract labour is contradictory to her claim wherein she claims to have been appointed and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam Intermediate in the services of Ms.G. Kumari w.e.f. 01.09.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, she was selected and appointed as Clerk cum Typist with the employer with effect from 1.3.1996 and she rendered continuous service. Further, it is submitted that while she was working so in the office of the Senior Divisional Engineer (Civil), BSNL, Sub-Division, Srikakulam and working on wages of Rs.1200/- per month. Further, the nature of duties were clerical that includes maintenance of all records, registers and statements and further authorized to receive the salaries of the concerned, M.Os, registered letters addressed to the divisional officer etc., and the hours of duty per day were of 10 to 12 hours. Further, it is submitted that she was doing the work of perennial in nature and she was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 01.09.2009 . She has been working uninterruptedly for more than 240 days a year, in all these years.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed, and it is also denied that salary of the Workman was Rs.1200/- per month and she worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that she worked for 240 days uninterruptedly. Respondent contended that claimant was neither appointed nor terminated and that her salary was Rs.1200/- per month falsifies her contention. Hence the question of terminating her services does not arise. Workman has not filed any piece of paper to establish the claim of her appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as she was appointed by this Respondent and she was shown as a contract labour, which is contradictory to her claim, that she has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged her service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 14 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined herself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W7. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 01.09.2009 is justified. The Workman herein Ms.G. Kumari has examined herself as WW1 and in her chief affidavit she has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case. I have not filed any application as mentioned in the chief exam affidavit. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy, Madhav Reddy & Tanuja as they are civil contractors. It is not true to say that they are labour contractors under BSNL company. It is true that I have not filed any document to show that I worked with respondent from 1.3.1996 to 01.09.2009 . It is not true to say that I was not working under BSNL and that this company has no link with mine. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement.."

10. In support of her claim, Workman has also filed the documents in evidence. Ex.W1 is the service certificate. Ex.W2 is the identity card. Ex.W3 is the. Authorization of Asst. Engineer, Ex.W4 is the post card from Dist. Emp. Officer, Srikakulam. Ex.W5 is the representation of workman. Ex.W6 is the reply of the Respondent and Ex.W7 is the minutes of meeting. Workman Ms. G. Kumari claims that she has been terminated from the service by the Respondent with effect from 01.09.2009 and she had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of her termination, i.e., 01.09.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of her termination, i.e., 01.09.2009 . Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be

regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and she has to prove that she had worked 240 days continuously in a calendar year just preceding her date of termination, i.e., 01.09.2009, in the employment of Respondent as she had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate her claims that she had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that she had worked 240 days in a calendar year continuously just preceding from her date of termination, i.e., 01.09.2009 . In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove her case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding her date of termination, therefore, the claim of the workman that she has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of her termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish her claim that her termination vide order dated 01.09.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Ms.G. Kumari is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish her claim of illegal termination, therefore, she is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Ms.G. Kumari w.e.f. 01.09.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 12th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Ms.G. Kumari	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of service certificate
Ex.W2:	Photostat copy of identity card
Ex.W3:	Photostat copy of authorisaion of Asst. Engineer, SKLM
Ex.W4:	Photostat copy of post card from DEO, SKLM
Ex.W5:	Photostat copy of representation to ACL, V
Ex.W6:	Photostat copy of reply of Respondent
Ex.W7:	Photostat copy of minutes of meeting

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री बी. अप्पाला राजू, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 7/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/3/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 247.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 7/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Shri B. Appala Raju, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/3/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 6th day of February, 2025

INDUSTRIAL DISPUTE No. 7/2010

Between:

Shri B. Appala Raju,

S/o Sanyasi Rao,

D.No.2-8-2, Vijayaramaraju Peta,

Bobbilivari St., Anakapalli,

Visakhapatnam(A.P.) ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/ 3/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer, BSNL, Visakhapatnam and their contractor with regard to employment of Sri B. Appala Raju is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f. 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 7/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that he studied upto X class and under an application he was selected and appointed as Group "D" Beldar cum Peon with the employer w.e.f. 5.5.1995 and working on wages of Rs.850/- per month and the nature of duties were stitching of files, posting of letters at Post Office, carrying and handing over letters etc.,to different units, taking Xerox copies, stapling files and estimateds, stitching estimates and NITs, supplying water and tea and other works entrusted by the officers of the employer and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that he was doing was perennial in nature and that while he was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on his part, he was terminated from service unceremoniously w.e.f. 10.10.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. The employer used to maintain an attendance register. Copy of the attendance register for the period of May, 1996 is herewith annexed. As the services of the workman are continuous in the same department the entire service of his be computed for all the purposes. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and he is the bread winner to the large family. It is submitted that the workman in toto rendered 14 years of unblemished service to the employer straining himself from dawn to dusk with a fond hope that in all just and fairness that his services could be continued till he attains superannuation. It is further submitted that he raised an industrial dispute. Hence

prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. 10.10.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that he is also entitled for absorption with the employer in lieu of the nature and length of service he rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 5.5.1995(5.7.1995) as Telecom Assistant and that the salary was fixed at Rs.1200/- per month and posted in the office of Planning Administrative Wing (Civil), BSNL, Visakhapatnam that his nature of duties was typing works and preparation of statements etc.. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked 10 to 12 hours per day and worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that his salary was Rs.850 /- per month falsifies his contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that he was shown a contract labour is contradictory to his claim wherein he claims to have been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered service of 14 years, as per records of the Respondent and the question of sudden and surprise unceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant's claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that he was employed by the Respondent and terminated on 10.10.2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam in terminating the services of Sri B. Appala Raju w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, he was selected and appointed as Group D part time Beldar cum Peon with the employer with effect from 5.5.1995 and he rendered continuous service and working on wages of Rs. 850/- per month. Further, the nature of duties were stitching of files, posting of letters at post office, courier service, carrying and handing over letters etc., to different units, taking Xerox copies, stapling files and stitching estimates and NITs, supplying water and tea and other works entrusted by the officers of the employer. Further, it is submitted that hours of duty per day were 10 to 12 hours and he was doing the work of perennial in nature and he was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009. Further, it is submitted that during 1996 attendance register had also been maintained by the department.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 5.5.1995 (5.7.1995) and it is also denied that salary of the Workman was Rs. 850/- per month and he worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by

the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that he worked for 240 days uninterruptedly from 5.5.1995 to 10.10.2009. Respondent contended that claimant was neither appointed nor terminated and that his salary was Rs.1200/- per month falsifies his contention. Further, the claimant was never appointed. Hence the question of terminating his services does not arise. Workman has not filed any piece of paper to establish the claim of his appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as he was appointed by this Respondent and he was shown as a contract labour, which is contradictory to his claim, that he has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged his service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined himself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W7. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2009 is justified. The Workman herein Sri B. Appala Raju has examined himself as WW1 and in his chief affidavit he has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have passed 10th class in the year 1992. I have not received any appointment letter from the respondent management. I do not remember if I have filed my 10th class certificate in this case. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy & Madhav Reddy. It is not correct to say that the above contractors have engaged me and they used to pay monthly salary. My name was there in attendance register and as well as acquaintance roll. It is not correct to say that my name was not there in attendance register and pay roll register. As per Ex. W7, I was asked to attend the office of Respondent by the contractor from July 1995. It is not true to say that Ex. W5 is a fabricated document. It is not true to say that I have not worked from 15.4.1996 to 10.10.2009 under the respondent. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement.."

10. In support of his claim, Workman has also filed the documents in evidence. Ex.W1 is the attendance register for the month of June, 1996. Ex.W2 is the service certificate. Ex.W3 is the letter of appreciation by employer. Ex.W4 is the representation to ACL, Visakhapatnam. Ex.W5 is the reply of Respondent. Ex.W6 is the minutes of meeting and Ex.W7 is lr. dated 5.7.95 wherein the Petitioner was directed to work as Beldar / Office Peon through contractor. Thus, from Ex.W7 it is established that the Workman was engaged as Beldar /Office peon vide order dated 5.7.1995 issued by Executive Engineer, Telecom, Civil Divison –II, Visakhapatnam. Ex.W1 contains the photocopy of register of attendance pertaining to May,1996. It goes to show that the Workman Sri B. Appala Raju along with other workmen Sri K.M. Priyadarishini, N. Lalitha, N. Padmavathi, P. Harinadha reddy , P. sreenivasa Rao and P. Santhosh Kumar, has attended the duties in all working days in the Respondent office. Therefore, according to preponderance of probability, these documents are taken into consideration for establishing the fact that the Workman Sri B. Appala Raju had worked in the Respondent office during the years 1996.

10. Workman Sri B. Appala Raju claims that he has been terminated from the service by the Respondent with effect from 10.10.2009 and he had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of his termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. From the perusal of evidence of WWI and document Ex.W7, it is establihed that Petitioner had worked as Beldar cum Peon in the Respondent management with effect from 5.7.1995. Therefore, as a contract workman, Petitioner was in the employment of Respondent and he has right to file petition under the provision of I.D. Act, 1947 for redressal of his grievances of termination. Therefore, the argument of Respondent in this regard is not tenable.

In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of his termination, i.e., 10.10.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously* .."

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and he has to prove that he had worked 240 days continuously in a calendar year just preceding his date of termination, i.e., 10.10.2009, in the employment of Respondent as he had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate his claim that he had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that he had worked 240 days in a calendar year continuously just preceding from his date of termination, i.e., 10.10.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove his case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding his date of termination, therefore, the claim of the workman that he has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of his termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish his claim that his termination vide order dated 10.10.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Sri B. Appala Raju is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish his claim of illegal termination, therefore, he is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Sri B. Appala Raju w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 6th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri B. Appala Raju	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of attendance register
Ex.W2:	Photostat copy of service certificate
Ex.W3:	Photostat copy of lr. of appreciation dt.28.12.2006
Ex.W4:	Photostat copy of representation to ACL(C)
Ex.W5:	Photostat copy of reply of Respondent
Ex.W6:	Photostat copy of Minutes of meeting dt.8.12.2009
Ex.W7:	Photostat copy of lr. dt.5.7.1995 taking Petitioner into work

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री पी. श्रीनिवास राव, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 8/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/4/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 248.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 8/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Shri P. Srinivasa Rao, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/4/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 7th day of February, 2025

INDUSTRIAL DISPUTE No. 8/2010

Between:

Sri P. Srinivasa Rao,

C/o G. Ramana,

D.No.58-24-40/1, Jayaprakashnagar,

Butchirajiupalem, N.A.D. Kotha Road,

Visakhapatnam(A.P.) ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/4/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Shri P. Srinivasa Rao is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f. 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 8/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that he studied upto X class and under an application he was selected and appointed as Group "D" Beldar cum Peon with the employer w.e.f. 5.7.1995 and working on wages of Rs.850/- per month and the nature of duties were stitching of files, posting of letters at Post Office, carrying and handing over letters etc.,to different units, taking Xerox copies, stapling files and estimates, stitching estimates and NITs, supplying water and tea and other works entrusted by the officers of the employer and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that he was doing was perennial in nature and that while he was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on his part, he was terminated from service unceremoniously w.e.f. 10.10.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. The employer used to maintain an attendance register. Copy of the attendance register for the period of April, 1996 is herewith annexed. As the services of the workman are continuous in the same department the entire service of his be computed for all the purposes. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and he is the bread winner to the large family. It is submitted that the workman in toto rendered 14 years of unblemished service to the employer straining himself from dawn to dusk with a fond hope that in all just and fairness that his services could be continued till he attains superannuation. It is further submitted that he raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the

employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. 10.10.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that he is also entitled for absorption with the employer in lieu of the nature and length of service he rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 5.7.1995(5.7.1995) as Telecom Assistant and that the salary was fixed at Rs.1200/- per month and posted in the office of Planning Administrative Wing (Civil), BSNL, Visakhapatnam that his nature of duties was typing works and preparation of statements etc.. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked 10 to 12 hours per day and worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that his salary was Rs.850 /- per month falsifies his contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that he was shown a contract labour is contradictory to his claim wherein he claims to have been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered service of 14 years, as per records of the Respondent and the question of sudden and surprise unceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant's claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that he was employed by the Respondent and terminated on 10.10.2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam in terminating the services of Sri P. Srinivasa Rao w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, he was selected and appointed as Group D part time Beldar cum Peon with the employer with effect from 5.7.1995 and he rendered continuous service and working on wages of Rs. 850/- per month. Further, the nature of duties were stitching of files, posting of letters at post office, courier service, carrying and handing over letters etc., to different units, taking Xerox copies, stapling files and stitching estimates and NITs, supplying water and tea and other works entrusted by the officers of the employer. Further, it is submitted that hours of duty per day were 10 to 12 hours and he was doing the work of perennial in nature and he was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009. Further, it is submitted that during 1996 attendance register had also been maintained by the department.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 5.7.1995 (5.7.1995) and it is also denied that salary of the Workman was Rs. 850/- per month and he worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that he

worked for 240 days uninterruptedly from 5.7.1995 to 10.10.2009. Respondent contended that claimant was neither appointed nor terminated and that his salary was Rs.1200/- per month falsifies his contention. Further, the claimant was never appointed. Hence the question of terminating his services does not arise. Workman has not filed any piece of paper to establish the claim of his appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as he was appointed by this Respondent and he was shown as a contract labour, which is contradictory to his claim, that he has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged his service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined himself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W7. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2009 is justified. The Workman herein Sri P. Srinivasa Rao has examined himself as WW1 and in his chief affidavit he has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have passed 10th class in the year 1992. I have not received any appointment letter from the respondent management. I do not remember if I have filed my 10th class certificate in this case. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy & Madhav Reddy. It is not correct to say that the above contractors have engaged me and they used to pay monthly salary. My name was there in attendance register and as well as acquaintance roll. It is not correct to say that my name was not there in attendance register and pay roll register. As per Ex. W7, I was asked to attend the office of Respondent by the contractor from July 1995. It is not true to say that Ex. W5 is a fabricated document. It is not true to say that I have not worked from 15.4.1996 to 10.10.2009 under the respondent. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement.."

10. In support of his claim, Workman has also filed the documents in evidence. Ex.W1 is the attendance register for the month of June, 1996. Ex.W2 is the service certificate. Ex.W3 is the letter of appreciation by employer. Ex.W4 is the representation to ACL, Visakhapatnam. Ex.W5 is the reply of Respondent. Ex.W6 is the minutes of meeting and Ex.W7 is lr. dated 5.7.95 wherein the Petitioner was directed to work as Beldar / Office Peon through contractor. Thus, from Ex.W7 it is established that the Workman was engaged as Beldar /Office peon vide order dated 5.7.1995 issued by Executive Engineer, Telecom, Civil Divison –II, Visakhapatnam. Ex.W1 contains the photocopy of register of attendance pertaining to April,1996. It goes to show that the Workman Sri P. Srinivasa Rao along with other workmen Sri K.M. Priyadarishini, N. Lalitha, N. Padmavathi, P. Harinadha reddy , P. sreenivasa Rao and P. Santhosh Kumar, has attended the duties in all working days in the Respondent office. Therefore, according to preponderance of probability, these documents are taken into consideration for establishing the fact that the Workman Sri P. Srinivasa Rao had worked in the Respondent office during the years 1996.

11. Workman Sri P. Srinivasa Rao claims that he has been terminated from the service by the Respondent with effect from 10.10.2009 and he had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of his termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

12. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. From the perusal of evidence of WWI and document Ex.W7, it is establihed that Petitioner had worked as Beldar cum Peon in the Respondent management with effect from 5.7.1995. Therefore, as a contract workman, Petitioner was in the employment of Respondent and he has right to file petition under the provision of I.D. Act, 1947 for redressal of his grievances of termination. Therefore, the argument of Respondent in this regard is not tenable.

In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

13. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of his termination, i.e., 10.10.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as April be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which April be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be

regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously* .."

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and he has to prove that he had worked 240 days continuously in a calendar year just preceding his date of termination, i.e., 10.10.2009, in the employment of Respondent as he had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate his claim that he had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that he had worked 240 days in a calendar year continuously just preceding from his date of termination, i.e., 10.10.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove his case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding his date of termination, therefore, the claim of the workman that he has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

14. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of his termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

15. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish his claim that his termination vide order dated 10.10.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Sri P. Srinivasa Rao is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

16. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish his claim of illegal termination, therefore, he is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Sri P. Srinivasa Rao w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 7th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Srinivasa Rao	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of attendance register
Ex.W2:	Photostat copy of service certificate
Ex.W3:	Photostat copy of lr. of appreciation dt.28.12.2006
Ex.W4:	Photostat copy of representation to ACL(C)
Ex.W5:	Photostat copy of reply of Respondent
Ex.W6:	Photostat copy of Minutes of meeting dt.8.12.2009
Ex.W7:	Photostat copy of lr. dt.5.7.1995 taking Petitioner into work

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री पी. हरिनाथ रेड्डी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 9/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/5/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 249—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 9/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Shri P. Harinatha Reddy, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/5/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 7th day of February, 2025

INDUSTRIAL DISPUTE No. 9/2010

Between:

Sri P. Harinatha Reddy,

D.No.36-93-308/7, Indiranagar,

NH-5 Road, Kancharapalem,

Visakhapatnam(A.P.)-530008. ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/5/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Shri P. Harinatha Reddy is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f. 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 9/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that he was under graduate but qualified in ITI (Civil) , while the technical qualifications are concerned passed Higher Typewriting and conversant in System operations such as MS Word, MS Excel, WS and while so under an application he was selected and appointed as Telecom Office Assistant (DOT) Sub-Divisional Clerk (BSNL) with the employer w.e.f. 15.4.1996 and working on wages of Rs.1200/- per month and the nature of duties were all typing works and as well as on the system in preparation of Comparative statements etc., and thus the nature of duties entrusted by the officers of the employer and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that he was doing was perennial in nature and that while he was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on his part, he was terminated from service unceremoniously w.e.f. 10.10.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. The employer used to maintain an attendance register. Copy of the attendance register for the period of June, 1996 is herewith annexed. As the services of the workman are continuous in the same department the entire service of his be computed for all the purposes. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and he is the bread winner to the large family. It is submitted that the workman in toto rendered 13 years of unblemished service to the employer straining himself from dawn to dusk with a fond hope that in all just and fairness that his services could be continued till he attains superannuation. Hence, prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. 10.10.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that he is also entitled for absorption with the employer in lieu of the nature and length of service he rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 15.4.1996 as Telecom Assistant and that the salary was fixed at Rs.1200/- per month and posted in the office of Planning Administrative Wing (Civil), BSNL, Visakhapatnam and that his nature of duties was typing works and preparation of statements etc.. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked 10 to 12 hours per day and worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that his salary was Rs.1200 /- per month falsifies his contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that he was shown a contract labour is contradictory to his claim wherein he claims to have

been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered service of 13 years, as per records of the Respondent and the question of sudden and surprise unceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant's claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that he was employed by the Respondent and terminated on 10.10.2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam in terminating the services of Sri P. Harinatha Reddy w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, he was selected and appointed as Telecom Office Assistant (DOT) Sub-Divisional clerk (BSNL) with the employer with effect from 15.4.1996 and he rendered continuous service and working on wages of Rs. 1200/- per month. Further, the nature of duties were all typing works and as well as on the system in preparation of Comparative statements etc., and thus the nature of duties entrusted by the officers and other works entrusted by the officers of the employer. Further, it is submitted that hours of duty per day were 10 to 12 hours and he was doing the work of perennial in nature and he was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009. Further, it is submitted that during 1996 attendance register had also been maintained by the department.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 15.4.1996 and it is also denied that salary of the Workman was Rs. 1200/- per month and he worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that he worked for 240 days uninterruptedly from 15.4.1996 to 10.10.2009. Respondent contended that claimant was neither appointed nor terminated and that his salary was Rs.1200/- per month falsifies his contention. Further, the claimant was never appointed. Hence the question of terminating his services does not arise. Workman has not filed any piece of paper to establish the claim of his appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as he was appointed by this Respondent and he was shown as a contract labour, which is contradictory to his claim, that he has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged his service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined himself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W6. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2009 is justified. The Workman herein Sri P. Harinatha Reddy has examined himself as WW1 and in his chief affidavit he has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management. I do not remember if I have filed my 10h class certificate in this case. I do not know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy & Madhav Reddy & Tanuja . I was appointed through my brother Srinivas Rao who was clerking as a clerk in BSNL. l cannot say if I can examine him (Srinivas, my brother) It is not correct to say that I am deposing falsehood and that I know the above contractors and that I was appointed through my brother i.e. Srinivas. It is true that I have not mentioned in my. claim statement that I was appointed through my brother nor in my evidence affidavit. It is not true to say that Ex. WI Attendence Register is a bogus one and fabricated document. It is not true to say that I was not working under BSNL and that this company has no link with me. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I have not worked from 15,4 1996 to 10.10.2009 under the respondent. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement."

10. In support of his claim, Workman has also filed the documents in evidence. Ex.W1 is the attendance register for the month of June, 1996. Ex.W2 is the is the service certificate. Ex.W3 is the letter of appreciation by employer. Ex.W4 is the representation to ACL, Visakhapatnam. Ex.W5 is the reply of the Respondent. Ex.W6 is the minutes of meeting. Ex.W1 contains the photocopy of register of attendance pertaining to June,1996. It goes to show that the Workman Sri P. Harinatha Reddy along with other workmen Sri K.M. Priyadarishini, N. Lalitha, N. Padmavathi, B. Appala Raju, and P. Santhosh Kumar, has attended the duties in all working days in the Respondent office. Therefore, according to preponderance of probability, these documents are taken into consideration for establishing the fact that the Workman Sri P. Harinatha Reddy had worked in the Respondent office during the year 1996.

10. Workman Sri P. Harinatha Reddy claims that he has been terminated from the service by the Respondent with effect from 10.10.2009 and he had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of his termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. From the perusal of evidence of WWI it is established that Petitioner had worked as Telecom Office Assistant in the Respondent management with effect from 15.4.1996. Therefore, as a contract workman, Petitioner was in the employment of Respondent and he has right to file petition under the provision of I.D. Act, 1947 for redressal of his grievances of termination. Therefore, the argument of Respondent in this regard is not tenable.

In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of his termination, i.e., 10.10.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as June be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which June be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and he has to prove that he had worked 240 days continuously in a calendar year just preceding his date of termination, i.e., 10.10.2009, in the employment of Respondent as he had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate his claim that he had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that he had worked 240 days in a calendar year continuously just preceding from his date of termination, i.e., 10.10.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove his case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding

his date of termination, therefore, the claim of the workman that he has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of his termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish his claim that his termination vide order dated 10.10.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Sri P. Harinatha Reddy is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish his claim of illegal termination, therefore, he is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Sri P. Harinatha Reddy w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 7th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Harinatha Reddy	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of attendance register
Ex.W2:	Photostat copy of service certificate
Ex.W3:	Photostat copy of lr. of appreciation dt.28.12.2006
Ex.W4:	Photostat copy of representation to ACL(C)
Ex.W5:	Photostat copy of reply of Respondent
Ex.W6:	Photostat copy of Minutes of meeting dt.8.12.2009

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल, डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती एस. मंजुला रानी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 12/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/6/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 250.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No. 12/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Smt. S. Manjula Rani, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/6/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 11th day of February, 2025

INDUSTRIAL DISPUTE No. 12/2010

Between:

Smt. S. Manjula Rani,

C/o B.N. Sai Kumar,

D.No.6-11-2, Near Flour Mill,

Main Road, China Waltair,

Visakhapatnam(A.P.)-17 ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/6/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Smt. S. Manjula Rani is sham and bogus? If yes, whether the action of the Management in terminating her services w.e.f 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 12/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that under an application she was selected and appointed as Telecom Office Assistant (DOT)/Division Clerk with the employer w.e.f. 1.5.1997 on wages of rs.1200/- per month and that stand posted to work under the control and commond of the officers of the Executive Engineer, B.S.N.L, Civil Division, Accounts section, Visakhapatnam and the nature of duties were clerical that includes preparation of trial balance, comparative statements, maintenance of all accounts registers, calculation of LS & pg and bank reconcilitiation statements, progress statements and typing of accounts matters, eltters and other works entrusted by EE AO and other officers and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that she was doing was perennial in nature and that while she was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on her part she was terminated from service unceremoniously w.e.f. October, 2003 under violation of the statutory provisions of law relating to the industrial jurisprudence. Employer maintained attendance registers for the first few years but subsequently given up the said practice. It is submitted that during that period the workman got so many employment opportunities but she remained back with the employer owing to the assurance given by the concerned authority that her services could be absorbed and permanency be granted with higher benefits than the one she could get elsewhere. The alleged name as "Contract Labour" is only sham and nominal. It is a camouflage to prevent the workman from claiming the benefits of Labour Laws that are applicable in the circumstances. Ipso facto there is no mediator in the matter of either appointment of the workman or her continuance of the service with the employer. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and she is the bread winner to the large family. It is submitted that the workman in toto rendered 13 years of unblemished service to the employer straining herself from dawn to dusk with a fond hope that in all just and fairness that her services could be continued till she attains superannuation. But, services of workman were uninterrupted It is further submitted that she raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. October, 2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that she is also entitled for absorption with the employer in lieu of the nature and length of service she rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 1.5.1997 as telecom Assistant, in the office of Executive Engineer, B.S.NL, Civil Division, A/c section and that the salary was fixed at Rs.1200/- per month and that she worked for 10 to 12 hours per day is also denied. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that her salary was Rs.1200/- per month falsifies her contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. It is suffice to state that the description of the said employee does not tally with the Petitioner and the claim is now time barred. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that she was shown a contract labour is contradictory to her claim wherein she claims to have been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered services of 13 years, as per records of the Respondent and the question of sudden and surprise un ceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is

contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that she was employed by the Respondent and terminated on 10.10.2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam Intermediate in the services of Smt.S. Manjula Rani w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, she was selected and appointed as Telecom Office Assistant (DOT)/Division Clerk with the employer with effect from 1.5.1997 and she rendered continuous service. That she was working so in the office of the Executive Engineer, M/s. BSNL, Civil Division, Visakhapatnam and working on wages of Rs.1200/- per month. Further, the nature of duties were clerical that includes preparation of trial balance, comparative statements, maintenance of all accounts registers, calculation of LS & pg and bank reconcilitiation statements, progress statements and typing of accounts matters, eltters and other works entrusted by EE AO and other officers of the employer. Further, it is submitted that hours of duty per day were 10 to 12 hours and she was doing the work of perennial in nature and she was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009 and she has been working uninterruptedly for more than 240 days a year, in all these years. Further, it is submitted that for some few years attendance registers had also been maintained by the department.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 1.5.1997 and it is also denied that salary of the Workman was Rs.1200/- per month and she worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that she worked for 240 days uninterruptedly from 5.5.1997 to 10.10.2009. Respondent contended that claimant was neither appointed nor terminated and that her salary was Rs.1200/- per month falsifies her contention. Further, the claimant was never appointed. Hence the question of terminating her services does not arise. Workman has not filed any piece of paper to establish the claim of her appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as she was appointed by this Respondent and she was shown as a contract labour, which is contradictory to her claim, that she has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged her service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined herself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W2. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2003 is justified. The Workman herein Smt.S. Manjula Rani has examined herself as WW1 and in her chief affidavit she has reiterated the averments made in the claim statement. In cross examination WW1 states:-

". I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case. I have not filed any application as mentioned in the chief exam affidavit. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy, Madhav Reddy & Tanuja as

they are civil contractors. It is not true to say that they are labour contractors under BSNL company. It is true that I have not filed any document to show that I worked with respondent from 1.5.1997 to 10.10.2009. I misplaced the original of Ex. W1 i.e. service certificate. It is not true to say that Ex. W1 is a bogus one and it is fabricated for the purpose of this case. It is not true to say that I was not working under BSNL and that this company has no link with me. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement."

10. In support of her claim, Workman has also filed the documents in evidence. Ex.W1 is the service certificate and Ex.W2 is the representation. Workman Smt.S. Manjula Rani claims that she has been terminated from the service by the Respondent with effect from 10.10.2009 and she had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of her termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of her termination, i.e., 10.10.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and she has to prove that she had worked 240 days continuously in a calendar year just preceding her date of termination, i.e., 10.10.2009, in the employment of Respondent as she had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate her claims that she had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that she had worked 240 days in a calendar year continuously just preceding from her date of termination, i.e., 10.10.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove her case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding her date of termination, therefore, the claim of the workman that she has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of her termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim

of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish her claim that her termination vide order dated 10.10.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Smt. S. Manjula Rani is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish her claim of illegal termination, therefore, she is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Smt. S. Manjula Rani w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 11th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S. Manjula Rani	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1: Photostat copy of service certificate

Ex.W2: Photostat copy of representation to ACL(C)23.1.2004

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **सुश्री एन. ललिताम्बा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 13/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था I

[सं. एल - 40012/7/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 251.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No.13/2010) of the **Central Government Industrial Tribunal**

cum Labour Court– Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Ms. N. Lalithamba, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/7/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 11th day of February, 2025

INDUSTRIAL DISPUTE No. 13/2010

Between:

Ms.N. Lalithamba,

C/o N. Venugopal,

D.No.38-30-138, Punjab Hotel,

Husain Nagar, Marripalem,

Visakhapatnam(A.P.) ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/7/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer, BSNL, Visakhapatnam and their contractor with regard to employment of Ms. N. Lalithamba is sham and bogus? If yes, whether the action of the Management in terminating her services w.e.f 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 13/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that under an application she was selected and appointed as Clerk cum Typist with the employer w.e.f. February, 1996 on wages of Rs.1200/- per month and that stand posted to work under the control and command of the officers of the Executive Engineer, B.S.N.L, Civil, Visakhapatnam and the nature of duties were clerical that includes maintenance of all records, registers and statements and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that she was doing was perennial in nature and that while she was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart

practices were on her part she was terminated from service unceremoniously w.e.f. 10.10.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. It is submitted that during that period the workman got so many employment opportunities but she remained back with the employer owing to the assurance given by the concerned authority that her services could be absorbed and permanency be granted with higher benefits than the one she could get elsewhere. The alleged name as "Contract Labour" is only sham and nominal. It is a camouflage to prevent the workman from claiming the benefits of Labour Laws that are applicable in the circumstances. Ipso facto there is no mediator in the matter of either appointment of the workman or her continuance of the service with the employer. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and she is the bread winner to the large family. It is submitted that the workman in toto rendered 13 years of unblemished service to the employer straining herself from dawn to dusk with a fond hope that in all just and fairness that her services could be continued till she attains superannuation. But, services of workman were uninterrupted It is further submitted that she raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. 10.10.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that she is also entitled for absorption with the employer in lieu of the nature and length of service she rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed and that the salary was fixed at Rs.1200/- per month and that she worked for 8 hours per day is also denied. Suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that she was shown a contract labour is contradictory to her claim wherein she claims to have been appointed and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam Intermediate in the services of Ms.N. Lalithamba w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, she was selected and appointed as Clerk cum Typist with the employer with effect from February, 1996 and she rendered continuous service. Further, it is submitted that while she was working so in the office of the Executive Engineer, M/s. BSNL, Civil Division, Visakhapatnam and working on wages of Rs.1200/- per month. Further, the nature of duties were clerical that includes maintenance of all records, registers and statements and the hours of duty per day were of 10 to 12 hours. Further, it is submitted that she was doing the work of perennial in nature and she was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009. She has been working uninterruptedly for more than 240 days a year, in all these years.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed, and it is also denied that salary of the Workman was Rs.1200/- per month and she worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that she worked for 240 days uninterruptedly. Respondent contended that claimant was neither appointed nor terminated and that her salary was Rs.1200/- per month falsifies her contention. Hence the question of terminating her services does not arise. Workman has not filed any piece of paper to establish the claim of her appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected. Further, Respondent denies that Petitioner has obtained order from ALC(C), under name of Ms.N. Lalithamba in her representation dated 23.1.2004. But it is suffice to state that the description of this employee does not tally with the Petitioner.

7. Further, Respondent contended that the claimant has claimed as she was appointed by this Respondent and she was shown as a contract labour, which is contradictory to her claim, that she has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged her service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined herself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W3. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2009 is justified. The Workman herein Ms.N. Lalithamba has examined herself as WW1 and in her chief affidavit she has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case. I have not filed any application as mentioned in the chief exam affidavit. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy, Madhav Reddy & Tanuja as they are civil contractors. It is not true to say that they are labour contractors under BSNL company. It is true that I have not filed any document to show that I worked with respondent from 1.2.1996 to 10.10.2009. It is not true to say that I was not working under BSNL and that this company has no link with mine. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I I only worked under the contractor and not under the BSNL management. It is not true to say tat I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement.."

10. In support of her claim, Workman has also filed the documents in evidence. Ex.W1 is the representation. Ex.W2 is the reply of the Respondent. Ex.W3 is the minutes of the meeting. Workman Smt.S. Manjula Rani claims that she has been terminated from the service by the Respondent with effect from 10.10.2009 and she had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of her termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of her termination, i.e., 10.10.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and she has to prove that she had worked 240 days continuously in a calendar year just preceding her date of termination, i.e., 10.10.2009, in the employment of Respondent as she had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate her claims that she had worked for

240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that she had worked 240 days in a calendar year continuously just preceding from her date of termination, i.e., 10.10.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove her case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding her date of termination, therefore, the claim of the workman that she has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of her termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish her claim that her termination vide order dated 10.10.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Ms.N. Lalithamba is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish her claim of illegal termination, therefore, she is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Ms.N. Lalithamba w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 11th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Ms.N. Lalithamba	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of representation to ACL, Visakhapatnam
Ex.W2:	Photostat copy of representation to ACL(C)
Ex.W3:	Photostat copy of minutes of meeting

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री आर. संतोष बाबू, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 10/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/8/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 252.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No.10/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Shri R. Santosh Babu, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/8/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 7th day of February, 2025

INDUSTRIAL DISPUTE No. 10/2010

Between:

Sri R. Santosh Babu,

D.No.10-21-4/2, Pithani Dibba,

Visakhapatnam(A.P.) ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/8/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Shri R. Santosh Babu is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f. 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 10/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that he studied upto X class and under an application he was selected and appointed as Group "D" Beldar cum Peon with the employer w.e.f. 1.2.1996 and working on wages of Rs.850/- per month and the nature of duties were stitching of files, posting of letters at Post Office, carrying and handing over letters etc.,to different units, taking Xerox copies, stapling files and estimates, stitching estimates and NITs, supplying water and tea and other works entrusted by the officers of the employer and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that he was doing was perennial in nature and that while he was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on his part, he was terminated from service unceremoniously w.e.f. 10.10.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. The employer used to maintain an attendance register. As the services of the workman are continuous in the same department the his entire service be computed for all the purposes. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and he is the bread winner to the large family. It is submitted that the workman in toto rendered 13 years of unblemished service to the employer straining himself from dawn to dusk with a fond hope that in all just and fairness that his services could be continued till he attains superannuation. It is further submitted that he raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits, continuity of service with full back wages for the period from date of arbitrary termination i.e. 10.10.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that he is also entitled for absorption with the employer in lieu of the nature and length of service he rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 1.2.1996 as Builder cum Peon and that the salary was fixed at Rs.1200/- per month and posted in the office of Executive Engineer (Civil), BSNL, Visakhapatnam and that his nature of duties was remittance of D.D. cash to the bank, stitching of files posting of letters etc.. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked 10 to 12 hours per day and worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that his salary was Rs.850 /- per month falsifies his contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that he was shown a contract labour is contradictory to his claim wherein he claims to have been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered service of 13 years, as per records of the Respondent and the question of sudden and surprise unceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant's claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that he was employed by the Respondent and terminated on 10.10.2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam in terminating the services of Sri R. Santosh Babu w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, he was selected and appointed as Group D part time Beldar cum Peon with the employer with effect from 1.2.1996 and he rendered continuous service and working on wages of Rs. 850/- per month. Further, the nature of duties were stitching of files, posting of letters at post office, courier service, carrying and handing over letters etc., to different units, taking Xerox copies, stapling files and stitching estimates and NITs, supplying water and tea and other works entrusted by the officers of the employer. Further, it is submitted that hours of duty per day were 10 to 12 hours and he was doing the work of perennial in nature and he was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009. Further, it is submitted that attendance register had also been maintained by the department.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 1.2.1996 and it is also denied that salary of the Workman was Rs. 850/- per month and he worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that he worked for 240 days uninterruptedly from 1.2.1996 to 10.10.2009. Respondent contended that claimant was neither appointed nor terminated and that his salary was Rs.1200/- per month falsifies his contention. Further, the claimant was never appointed. Hence the question of terminating his services does not arise. Workman has not filed any piece of paper to establish the claim of his appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as he was appointed by this Respondent and he was shown as a contract labour, which is contradictory to his claim, that he has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged his service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined himself as WW1 and also filed the document in support of claim, i.e., Ex.W1. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2009 is justified. The Workman herein Sri R. Santosh Babu has examined himself as WW1 and in his chief affidavit he has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy & Madhav Reddy & Tanuja. It is not correct to say that I am deposing falsehood. It is true that I have not filed any document to show that I worked with respondent from 1.2.1996 to 10.10.2009. It is not true to say that I was not working under BSNL and that this company has no link with me. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement..."

10. In support of his claim, Workman has also filed the documents in evidence. Ex.W1 is the representation to ACL, Visakhapatnam. Workman Sri R. Santosh Babu claims that he has been terminated from the service by the Respondent with effect from 10.10.2009 and he had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of his termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. It appears that as a contract workman, Petitioner was in the employment of Respondent and he has right to file petition under the provision of I.D. Act, 1947 for redressal of his grievances of termination. Therefore, the argument of Respondent in this regard is not tenable.

In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand, whether the workman had worked for 240 days in a calendar year just preceding from the date of his termination, i.e., 10.10.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as April be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which April be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and he has to prove that he had worked 240 days continuously in a calendar year just preceding his date of termination, i.e., 10.10.2009, in the employment of Respondent as he had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate his claim that he had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that he had worked 240 days in a calendar year continuously just preceding from his date of termination, i.e., 10.10.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove his case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding his date of termination, therefore, the claim of the workman that he has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of his termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish his claim that his termination vide order dated 10.10.2009 was in violation of

the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Sri R. Santosh Babu is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish his claim of illegal termination, therefore, he is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Sri R. Santosh Babu w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 7th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri R. Santosh Babu	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1: Photostat copy of representation to ACL(C)

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 253—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती डी. मीनाक्षी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 14/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/9/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 253.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No.14/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Smt. D. Meenakshi, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/9/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 12th day of February, 2025

INDUSTRIAL DISPUTE No. 14/2010

Between:

Smt.D. Meenakshi,

D.No.46-9-57, Dondaparthy,

Kuppilivari Street,

Srikakulam – 532316. ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/ 9/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Smt. D. Meenakshi is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f 10.10.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 14/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that under an application she was selected and appointed as Clerk with the employer w.e.f. 08.03.1999 on wages of Rs.1200/- per month and that stand posted to work under the Superintending Engineer, B.S.N.L, Civil Circle, Visakhapatnam (Planning and Administration) and that she graduated in Commerce and that the nature of duties were clerical that includes maintenance of all records, registers and statements and the hours of duty per day were of 8 to 10 hours. It is submitted that the work that she was doing was perennial in nature and that while she was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on her part she was terminated from service unceremoniously w.e.f. 10.10.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. It is submitted that during that period the workman got so many employment opportunities but she remained back with the employer owing to the assurance given by the concerned authority that her services could be absorbed and permanency be granted with higher benefits than the one she could get elsewhere. The alleged name as "Contract Labour" is only sham and nominal. It is a camouflage to prevent the workman from claiming the benefits of Labour Laws that are applicable in the circumstances. Ipso facto there is no mediator in the matter of either appointment of the workman or her continuance of the service with the employer. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and she is the bread winner to the large family. It is submitted that the workman in toto rendered 10 years of unblemished service to the employer straining herself from dawn to dusk with a fond hope that in all just and fairness that her services could be continued till she attains superannuation. But, services of workman were uninterrupted It is further submitted that she raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action

taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits., continuity of service with full back wages for the period from date of arbitrary termination i.e. 10.10.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that she is also entitled for absorption with the employer in lieu of the nature and length of service she rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed and that the salary was fixed at Rs.1200/- per month and that she worked for 10 to 12 hours per day is also denied. Suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. That she worked for 240 days uninterruptedly and she was working w.e.f. 8.3.1999 to 10.10.2009 is also denied. That Respondent had given any assurance to the claimant is denied. It is denied that identity card was issued to her and issued service certificate also. It is submitted that the contention of claimant that she was shown a contract labour is contradictory to her claim wherein she claims to have been appointed and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam Intermediate in the services of Smt.D. Meenakshi w.e.f. 10.10.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, she was selected and appointed as Clerk with the employer with effect from 1.5.1999 and she rendered continuous service. Further, it is submitted that while she was working so in the office of the Superintending Engineer (Civil), BSNL, Visakhapatnam and working on wages of Rs.1200/- per month. Further, the nature of duties were clerical that includes maintenance of all records, registers and statements and the hours of duty per day were of 8 to 10 hours. Further, it is submitted that she was doing the work of perennial in nature and she was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 10.10.2009 . She has been working uninterruptedly for more than 240 days a year, in all these years.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed, and it is also denied that salary of the Workman was Rs.1200/- per month and she worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that she worked for 240 days uninterruptedly. Respondent contended that claimant was neither appointed nor terminated and that her salary was Rs.1200/- per month falsifies her contention. Hence the question of terminating her services does not arise. Workman has not filed any piece of paper to establish the claim of her appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as she was appointed by this Respondent and she was shown as a contract labour, which is contradictory to her claim, that she has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged her service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 14 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined herself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to W3. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 10.10.2009 is justified. The Workman herein Smt.D. Meenakshi has examined herself as WW1 and in her chief affidavit she has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case. I have not filed any application as mentioned in the chief exam affidavit. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy, Madhav Reddy & Tanuja as they are civil contractors. It is not true to say that they are labour contractors under BSNL company. It is true that I have not filed any document to show that I worked with respondent from 1.5.1999 to 10.10.2009. It is not true to say that I was not working under BSNL and that this company has no link with mine. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement.. "

10. In support of her claim, Workman has also filed the documents in evidence. Ex.W1 is the representation of workman. Ex.W2 is the reply of the Respondent and Ex.W3 is the minutes of meeting. Workman Ms. G. Kumari claims that she has been terminated from the service by the Respondent with effect from 10.10.2009 and she had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of her termination, i.e., 10.10.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand whether the workman had worked for 240 days in a calendar year just preceding from the date of her termination, i.e., 10.10.2009 . Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"*It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."*

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and she has to prove that she had worked 240 days continuously in a calendar year just preceding her date of termination, i.e., 10.10.2009, in the employment of Respondent as she had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate her claims that she had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that she had worked 240 days in a calendar year continuously just preceding from her date of termination, i.e., 10.10.2009 . In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove her case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding her date of termination, therefore, the claim of the workman that she has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of her termination

from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish her claim that her termination vide order dated 10.10.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Smt.D. Meenakshi is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish her claim of illegal termination, therefore, she is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Smt.D. Meenakshi w.e.f. 10.10.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 12th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt.D. Meenakshi	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of representation to ACL, V
Ex.W2:	Photostat copy of reply of Respondent
Ex.W3:	Photostat copy of minutes of meeting

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री एम. शंकर गणेश, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-हैदराबाद पंचाट (संदर्भ संख्या 11/2010) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/11/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 254.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No.11/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Shri M. Sankar Ganesh, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/11/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 10th day of February, 2025

INDUSTRIAL DISPUTE No. 11/2010

Between:

Sri M. Sankar Ganesh,

C/o J. Seshagiri Rao (TV9 Reporter)

D.No.11-9-6, Nagavampsapu Veedhi,

Near Kalanaiadu Mandir,

Vizianagaram. (A.P.) ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/ 11/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Shri M. Sankar Ganesh is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f. 01.09.2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 11/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that under an application he was selected and appointed as Clerk with the employer w.e.f. 18.8.2003 and working on wages of Rs.3200/-per month and posted under Senior Divisional Engineer(Civil), BSNL., Sub-Division, Vizianagaram and the nature of duties were clerical that includes maintenance of all records, registers and statements and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that he

was doing was perennial in nature and that while he was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on his part, he was terminated from service unceremoniously w.e.f. 31.08.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence. The employer used to maintain an attendance register. As the services of the workman are continuous in the same department the his entire service be computed for all the purposes. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and he is the bread winner to the large family. It is submitted that the workman in toto rendered 13 years of unblemished service to the employer straining himself from dawn to dusk with a fond hope that in all just and fairness that his services could be continued till he attains superannuation. It is submitted that he raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits, continuity of service with full back wages for the period from date of arbitrary termination i.e. 01.09.2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that he is also entitled for absorption with the employer in lieu of the nature and length of service he rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 18.8.2003 as Telecom Assistant and that the salary was fixed at Rs.2300/- per month and posted in the office of Sub-Divisional Engineer (Civil), Vizianagaram and that his nature of duties was clerical, maintenance of all records, registers etc.. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked 10 to 12 hours per day and worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that his salary was Rs.850 /- per month falsifies his contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that he was shown a contract labour is contradictory to his claim wherein he claims to have been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered service of 13 years, as per records of the Respondent and the question of sudden and surprise unceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant's claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that he was employed by the Respondent and terminated on 01.09.2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam in terminating the services of Sri M. Sankar Ganesh w.e.f. 01.09.2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, he was selected and appointed as Clerk with the employer with effect from 18.8.2003 and he rendered continuous service and working on wages of Rs. 3200/-per month. Further, the nature of duties were clerical that includes maintenance of all records, registers and statements. Further, it is submitted that hours of duty per day were 10 to 12 hours and he was doing the work of perennial in nature and he was working uninterruptedly for more than 240 days in a year, in all those years, continuously. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from 01.09.2009.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never

employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 18.8.2003 and it is also denied that salary of the Workman was Rs. 2300/-per month and he worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that he worked for 240 days uninterruptedly from 18.8.2003 to 01.09.2009. Respondent contended that claimant was neither appointed nor terminated and that his salary was Rs.2300/- per month falsifies his contention. Further, the claimant was never appointed. Hence the question of terminating his services does not arise. Workman has not filed any piece of paper to establish the claim of his appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as he was appointed by this Respondent and he was shown as a contract labour, which is contradictory to his claim, that he has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged his service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined himself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to Ex.W3. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated 01.09.2009 is justified. The Workman herein Sri M. Sankar Ganesh has examined himself as WW1 and in his chief affidavit he has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case I have not filed any application mentioined in the chief exam affidavit. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy & Madhav Reddy & Tanuja. It is not correct to say that I know the contractors and I am deliberately denying the said fact. It is true that I have not filed any document to show that I worked with respondent from 18.8.2003 to 31.08.2009. It is not true to say that I was not working under BSNL and that this company has no link with me. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement..."

10. In support of his claim, Workman has also filed the documents in evidence. Ex.W1 is the representation to ACL, Visakhapatnam. Ex.W2 is the reply of the Respondent. Ex.W3 is the minutes of the meeting held by ACL, Visakhapatnam.Workman Sri M. Sankar Ganesh claims that he has been terminated from the service by the Respondent with effect from 01.09.2009 and he had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of his termination, i.e., 01.09.2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. It appears that as a contract workman, Petitioner was in the employment of Respondent and he has right to file petition under the provision of I.D. Act, 1947 for redressal of his grievances of termination. Therefore, the argument of Respondent in this regard is not tenable.

In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand, whether the workman had worked for 240 days in a calendar year just preceding from the date of his termination, i.e., 01.09.2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as April be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which April be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously* .."

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and he has to prove that he had worked 240 days continuously in a calendar year just preceding his date of termination, i.e., 01.09.2009, in the employment of Respondent as he had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate his claim that he had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that he had worked 240 days in a calendar year continuously just preceding from his date of termination, i.e., 01.09.2009. In order to claim the protection against illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove his case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding his date of termination, therefore, the claim of the workman that he has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of his termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish his claim that his termination vide order dated 01.09.2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Sri M. Sankar Ganesh is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish his claim of illegal termination, therefore, he is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Sri M. Sankar Ganesh w.e.f. 01.09.2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 10th day of February, 2025.

IRFAN QAMAR**,** Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Sankar Ganesh	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1: Photostat copy of representation to ACL(C)

Ex.W2: Photostat copy of reply of Respondent

Ex.W3: Photostat copy of minutes of meeting held by ACL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **अधीक्षण अभियंता (सिविल), मेसर्स- बीएसएनएल,डाबागार्डन्स, विशाखापत्तनम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री एच.वी.एस. रघुनाथ, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 15/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 19.02.2025 को प्राप्त हुआ था।

[सं. एल - 40012/12/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 19th February, 2025

S.O. 255—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. ID. No.15/2010) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Engineer(Civil), M/s. BSNL, Dabagardens, Visakhapatnam, and Shri H.V.S. Raghunath, Worker,** which was received along with soft copy of the award by the Central Government on 19.02.2025.

[No. L-40012/12/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 12th day of February, 2025

INDUSTRIAL DISPUTE No. 15/2010

Between:

Sri H.V.S. Raghunath,

Plot No.7-91, Shipyard Layout,

P.M. Palem (Madhuravada)

Visakhapatnam. (A.P.) ….. Petitioner

AND

The Superintending Engineer(Civil),

M/s. BSNL,

Civil Circle, D.No.29-6-3, 2nd floor,

Lalitha Colony, Dabagardens,

Visakhapatnam -530 020. …. Respondent

Appearances:

For the Petitioner : M/s. B. J. Krishna Mohan & N.V.S.S. Papa Rao, Advocates

For the Respondent: Sri K. Mohan, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L- 40012/ 12/2010-IR(DU) dated 19.4.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. BSNL and their workman. The reference is,

SCHEDULE

"Whether the contract between the management of Superintending Engineer(Civil), BSNL, Visakhapatnam and their contractor with regard to employment of Shri H.V.S. Raghunath is sham and bogus? If yes, whether the action of the Management in terminating his services w.e.f. August, 2009 is legal and justified? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 15/2010 and notices were issued to the parties concerned.

2. **The averments made is the claim statement are as follows**:

The workman submits that under an application he was selected and appointed as Telecom Office Assistant (DOT) Sub-Divisional Clerk (BSNL) with the employer w.e.f. 1.8.1996 and working on wages of Rs.1200/-per month and posted under Executive Engineer Telecom (Civil Division -II), BSNL., Visakhapatnam and later on Executive Engineer Telecom (Civil Division), BSNL., Visakhapatnam and the nature of duties were all typing works and any other works entrusted by the officers, while in the SDO, typing on computers as well as type machine, preparation of comparative statements etc.. and thus the nature of duties entrusted were of clerical that includes maintenance of all records, registers and statements and the hours of duty per day were of 10 to 12 hours. It is submitted that the work that he was doing was perennial in nature and that while he was working uninterruptedly for more than 240 days in a year in all those years continuously. It is further submitted that no smart practices were on his part, he was terminated from service unceremoniously w.e.f. 31.08.2009 under violation of the statutory provisions of law relating to the industrial jurisprudence.though the workman got so many employment opportunities, he remained back with the employer owing to the assurance given by the concerned authority that his services could be absorbed and permanency be granted with high benefits. That the alleged name as "contract Labour" is only sham and nominal. It is submitted that the workman is now age barred and ineligible for any other employment in any statutory establishment and he is the bread winner to the large family. It is submitted that the workman in toto rendered 13 years of unblemished service to the employer straining himself from dawn to dusk with a fond hope that in all just and fairness that his services could be continued till he attains superannuation. It is submitted that he raised an industrial dispute. Hence prayed to declare the alleged contract employment as bogus, a sham and nominal and that the action taken by the employer is unjust, unfair, illegal, arbitrary, vindictive, an unfair labour practice but also unreasonable and unsustainable under rule of law and direct the employer to reinstate the workman with all consequential and attendant benefits, continuity of service with full back wages for the period from date of arbitrary termination i.e. August, 2009 till date of actual reinstatement for the workman has not been employed gainfully ever anywhere and that he is also entitled for absorption with the employer in lieu of the nature and length of service he rendered.

3. **Respondent filed counter denying the averments of the Petitioner as under**:

At the outset Respondent denied various allegations made by the Petitioner except those which are specifically admitted. It is denied that the claimant was selected and appointed vide application with effect from 1.8.1996 as Telecom Assistant and that the salary was fixed at Rs.1200/- per month and posted in the office of Executive Engineer (Civil Divison-II), Visakhapatnam, Executive Engineer (Civil Division), Visakhapatnam and that his nature of duties was clerical, maintenance of all records, registers etc.. It is submitted that no such person has been appointed and no such appointment letter has been filed by the claimant and it is submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the Central Office. It is also denied that the claimant had worked 10 to 12 hours per day and worked for 240 days uninterruptedly. It is submitted that the claimant was neither appointed nor terminated as such the very fact that the claimant states that his salary was

Rs.850 /- per month falsifies his contention and suffice to state that the claimant was never appointed hence the question of terminating does not arise and no piece of paper has been filed to establish the same. It is submitted that the procedure for appointment is governed by the Constitution of India and there cannot be any other mode of appointment as such the claim of the claimant has to be rejected. That Respondent had given any assurance to the claimant is denied. It is submitted that the contention of claimant that he was shown a contract labour is contradictory to his claim wherein he claims to have been appointed. It is submitted that whenever the Respondent took contract labour, the contract between the Respondent and the labour contractor and Respondent never paid any amount directly to the labour, and has no concern as to who would be engaged by the contractor. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged the service and paid the wages, which falsifies the claim of the claimant. It is denied that claimant has rendered service of 13 years, as per records of the Respondent and the question of sudden and surprise unceremonious action does not arise. It is submitted that the claimant had claimed at he was appointed by Respondent on his application and now the claimant's claim that job works were carried by contractors. It is submitted that odd jobs were given in contract to contractors and the amounts were paid to the contractors, and the contention of the claimant that the same is sham and unfair is contrary to the record and suffice to state that the claimant has not produced a single piece of paper to establish that he was employed by the Respondent and terminated on August, 2009 and it is submitted that the appointments were done as per the rules by the Central Office and no recruitments are done directly by the department itself. The claimant was never employed and as such is not a workman of the Respondent and not entitled to raise the disputes under the Industrial Disputes Act. Hence, prayed to dismiss the claim of the claimant.

4. On the basis of rival pleadings following points emerged for determination in the present matter:-

I. Whether the action of the management of Superintending Engineer BSNL Visakhapatnam in terminating the services of Sri H.V.S. Raghunath w.e.f. August, 2009 is legal and justified?

II. To what relief the Workman is entitled for?

Findings:-

5. Point No.I:- As per claim of the Workman, he was selected and appointed as Telecom Office Assistant (DOT) with the employer with effect from 1.8.1996 and he rendered continuous service and working on wages of Rs. 1200/- per month. Further, under Executive Engineer Telecom (Civil Division -II), BSNL., Visakhapatnam and later on Executive Engineer Telecom (Civil Division), BSNL., Visakhapatnam and the nature of duties were all typing works and any other works entrusted by the officers, while in the SDO, typing on computers as well as type machine, preparation of comparative statements etc.. and thus the nature of duties entrusted were of clerical that includes maintenance of all records, registers and statements. Further, it is submitted that hours of duty per day were 10 to 12 hours and he was doing the work of perennial in nature and he was working uninterruptedly for more than 240 days in a year, in all those years, continuously. He has filed office order dated 11/12-09-1996 issued by Executive Engineer, Civil Division-II, Visakhapatnam relating to the allocation of the work to the workman along with other employees. Further, it is submitted that Respondent in violation of the provisions of I.D. Act, 1947 has terminated the Workman from service unceremoniously with effect from August, 2009.

6. Per contra, Respondent has filed counter wherein it is contended that the claim of the Petitioner is neither maintainable in law nor on facts and liable to be dismissed. Further, it is denied that claimant Workman was an employee of the Respondent. Further, it is submitted that as per record of the Respondent, the Petitioner was never employed by the Respondent. Further, it is submitted that the Workman is not employee of the Respondent and address of the Respondent given by the Petitioner is incorrect. Further, it is contended that the Workman was not selected and appointed vide application with effect from 1.8.1996 and it is also denied that salary of the Workman was Rs. 2300/-per month and he worked for 10 to 12 hours per day. Further, Respondent submitted that the appointment cannot be made by the Superintendent Engineer as the procedure of appointment of staff is decided by the central office. It is also denied by the Respondent that claimant had worked 10 to 12 hours per day and that he worked for 240 days uninterruptedly from 1.8.1996 to August, 2009. Respondent contended that claimant was neither appointed nor terminated and that his salary was Rs.1200/- per month falsifies his contention. Further, the claimant was never appointed. Hence the question of terminating his services does not arise. Workman has not filed any piece of paper to establish the claim of his appointment in the Respondent office. The procedure for appointment in the Respondent organization is governed by the Constitution of India and there cannot be any other mode of appointment. As such the claim of the claimant has to be rejected.

7. Further, Respondent contended that the claimant has claimed as he was appointed by this Respondent and he was shown as a contract labour, which is contradictory to his claim, that he has been appointed. Further, Respondent denies that the contract labour is a sham and that they always work under the Respondent. It is suffice to state that no documentary evidence has been filed to show that the Respondent has engaged his service and paid wages, which falsifies the claim of the claimant. Further, Respondent also denies that claimant has rendered service of 13 years. But as stated supra, the claimant was never employed. Further, it is contended that the Workman is not a Workman of the Respondent and not entitled to raise the dispute under the I.D. Act, 1947. Therefore, prayed that the claim of the Workman be dismissed with costs.

8. The workman has examined himself as WW1 and also filed the documents in support of claim, i.e., Ex.W1 to Ex.W4. On the other hand, Respondent has filed evidence affidavit of MW1 and MW2, and MW1 was cross examined by the Counsel for workman and Respondent has also filed the documents i.e., 49 documents. Although the affidavit of MW2 was filed by the Respondent, along with the aforesaid 49 documents, but as the witness MW2 was not produced for cross examination, therefore, the evidence of the MW2 is not admissible as per rule of evidence.

9. In view of the submissions and evidence on behalf of rival parties, let us proceed to examine whether the action of Respondent in terminating the services of the Workman vide order dated August, 2009 is justified. The Workman herein Sri H.V.S. Raghunath has examined himself as WW1 and in his chief affidavit he has reiterated the averments made in the claim statement. In cross examination WW1 states:-

"I have not received any appointment letter from the respondent management . I have not filed my educational qualification certificate in support of proof in this case I have not filed any application mentioned in the chief exam affidavit. I know the contractors of BSNL by name Mr Obul Reddy, Mr.Nagireddy & Madhav Reddy & Tanuja s they are civil contractors. It is not true to say that they are labour contractors under BSNL Company. It is true that ex.W1 does not mention the name H.V.S. Raghunath. It is true that I know the contractors and I am deliberately denying the said fact. It is true that I have not filed any document to show that I worked with respondent from 1.8.1996 to 31.08.2009. It is not true to say that I was not working under BSNL and that this company has no link with me. It is not true to say that I was working under the contractor and getting salary from them. My name was there in attendance register and as well as acquittence roll. It is not correct to say that my name was not there in attendance register and pay roll register. It is not true to say that I only worked under the contractor and not under the BSNL management. It is not true to say that I have no basis to file this case against the respondent and not entitled to get any relief as claimed in the claim statement..."

10. In support of his claim, Workman has also filed the documents in evidence. Ex.W1 is the representation to ACL, Visakhapatnam. Ex.W2 is the reply of the Respondent. Ex.W3 is the minutes of the meeting held by ACL, Visakhapatnam.Workman Sri H.V.S. Raghunath claims that he has been terminated from the service by the Respondent with effect from August, 2009 and he had worked uninterruptedly for more than 240 days in a year, in all those years, continuously. Now, let us examine whether workman herein had worked in the Respondent employment for 240 days continuously in a calendar year just preceding from the date of his termination, i.e., August, 2009 as per requirement of provision under Section 25F of the ID Act.

11. However, Respondent has questioned the maintainability of the claim statement/ Petition filed by the workman in the present matter. It appears that as a contract workman, Petitioner was in the employment of Respondent and he has right to file petition under the provision of I.D. Act, 1947 for redressal of his grievances of termination. Therefore, the argument of Respondent in this regard is not tenable.

In this context, the decision of Hon'ble Supreme Court in the case of **Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam, AIR 2009 SC page 309 is relevant wherein Hon'ble** Court have held,

"*12. It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part time basis but under the control and supervision of an employer is a workman in term of Section 2(s) of the Act, and is entitled to claim the protection of Section 25F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides.*

Thus, in view of the law laid down by the Hon'ble Apex Court as discussed above, the Workman herein who was employed as a part time employee by Respondent is covered under the definition of Section 2 (s) of the I.D. Act, 1947 and hence have right to file petition under provision of I.D. Act, 1947.

12. Now, we have to examine in the matter at hand, whether the workman had worked for 240 days in a calendar year just preceding from the date of his termination, i.e., August, 2009. Before appreciation of the evidence adduced by the Workman in this regard, it would be apposite to reproduce the relevant provision pertaining to the retrenchment under I.D. Act, which are reproduced as under:-

Section 25F provides:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month' s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as April be specified by the appropriate Government by notification in the Official Gazette].

Compensation to workmen in case of transfer of undertakings.

Section 25B defines the term continuous service:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which April be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

In the context, onus of proof to prove the plea of 240 days of continuous working by workman in a Calendar year just preceding the date of termination, Hon'ble Supreme Court in the case of **M/s. Essen Deienki Vs. Rajiv Kumar AIR 2003 SC page 38,** have held:-

"The proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and it is on this score that this Court in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25) was pleased to state as below :

" In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. ."

Further, in the case of **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held**:

"It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year These aspects were highlighted in Range Forest Officer v. S.T. Hadimani (2002 (3) SCC 25. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court held that the workman had worked for 240 days as claimed."

In Municipal Corporation, Faridabad v. Siri Niwas (2004 (8) SCC 195), held "*the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment." In M.P. Electricity Board v. Hariram (2004 (8) SCC 246) the position was again reiterated in paragraph 11 as follows: "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously ..*"

In the case of Manager, RBI, Bangalore vs. S Mani (2005) SCC Page 100, the 3 Judges Bench of the Apex Court held that "*the initial burden of proof was on the workman to show that he had completed 240 days of service."*

Therefore, in view of law laid down by Hon'ble Supreme Court as discussed above, the onus of proof lies upon the shoulder of the Workman herein and he has to prove that he had worked 240 days continuously in a calendar year just preceding his date of termination, i.e., August, 2009, in the employment of Respondent as he had claimed. The perusal of record reveals that workman herein has not filed any documentary evidence, i.e., any appointment letter, salary slip or attendance register pertaining to the year 2009 to substantiate his claim that he had worked for 240 days continuously in the employment of Respondent. Therefore, for the want of evidence of 240 days continuous service in a calendar year, we are unable to accept the plea of the Petitioner that he had worked 240 days in a calendar year continuously just preceding from his date of termination, i.e., August, 2009. In order to claim the protection against

illegal retrenchment under section 25 F of the ID Act, the onus of proof lies on workman to prove mandatory requirement of continuous working of 240 days in employment of Respondent but the workman has utterly failed to prove his case on this premise. Thus, in view of the above, I am constrained to hold that the Workman failed to discharge the onus of proof to establish the claim of continuous working 240 days in a calendar year just preceding his date of termination, therefore, the claim of the workman that he has been terminated in contravention of provision of Sec.25F of I.D. Act, 1947 is not tenable.

13. On the other hand, Respondent has examined MW1 in support of the contention made in counter wherein it has categorically been stated by MW1 that the witness denies that the Petitioner was working for 10 to 12 hours per day and had worked for 240 days uninterruptedly in a calendar year just preceding from the date of his termination from service. Further, MW1 states that no such appointment of workman was made by the Respondent Corporation. Further, Respondent contended that a writ petition was filed before the Hon'ble High Court and while disposing the writ petition, Hon'ble High Court has directed the Tribunal to adjudicate the present ID independently without being influenced by any of the observation made in the order passed in I.A. for production of the documents and examining the circumstances stated by the Respondent corporation as to the same is justified or not. Further, MW1 witness states that as per rules the documents are/were destroyed after 5 years and the documents sought to be produced are voluminous documents which having no relevance to the case. Further, it is submitted that the Petitioner had stated that they were appointed by the Respondent corporation initially and in their own claim statement they stated that they were engaged as contract labour. Hence, Respondent corporation cannot produce said documents and the claim of the claimant itself is speculative. In cross examination MW1 states that, it is not true to suggest that workman has rendered 13 years service in Respondent management. The Respondent has also filed the photocopy of the extract page of "P T F.H.B. VOL.I" wherein it is mentioned that period of preservation of the record has been mentioned in that extract, that provides, registers are maintained for the period of 5 years and muster Roll and Register of muster rolls are also maintained upto 5 years.

14. Thus, in view of fore gone discussion and law laid down by Hon'ble Court as discussed above the Workman in the present matter has failed to establish his claim that his termination vide order dated August, 2009 was in violation of the provisions contained under Section 25 F. Therefore, action of the Respondent management in terminating the services of Sri H.V.S. Raghunath is held legal and justified.

Thus, Point No.I is decided against the workman accordingly.

15. **Point No.II**:- In view of the finding arrived at Point No.I, workman failed to establish his claim of illegal termination, therefore, he is not entitled for any relief.

Thus, Point No.II is decided accordingly.

AWARD

The action of the management of Superintending Engineer, BSNL, Visakhapatnam in terminating the services of Sri H.V.S. Raghunath w.e.f. August, 2009 is held legal and justified. The workman is not entitled to any relief as prayed for. Petition is dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 10th day of February, 2025.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri H.V.S. Raghunath	MW1: Sri Sunil Kumar Singh

Documents marked for the Petitioner

Ex.W1:	Photostat copy of representation to ACL(C)
Ex.W2:	Photostat copy of reply of Respondent
Ex.W3:	Photostat copy of minutes of meeting held by ACL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2025

का.आ. 256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **केंद्रिय लोक निर्माण विभाग** के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (03/2023) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-255]

सलोनी, उप निदेशक

New Delhi, the 19 th February, 2025

S.O. 256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 03/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of CPWD and their workmen.

[No. L-12025/01/2024– IR(B-I) 25**5**]

SALONI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

LCA No. 03/2023

Smt. Bal Kumari, Late Sh. Govind Singh,

Through- Sh. Satish Kumar, Authorised representative,

H. No. 4823, Gali No. 13, Balbir Nagar Extension,

Shahadra, New Delhi-110032.

Versus

The Executive Engineer,

Dehradun Civil Division, CPWD,

20, Subhash Road, Dehradun, Uttarakhand-248001.

Appearance:-

For Claimants: Sh. Sunil Dutt Sharma, Ld. AR for the claimant.

For Managements: Sh. Atul Bhardwaj, Ld. AR for the management.

AWARD

This is an application **U/S 33C (2) of the Industrial Disputes Act (here in after is referred as an Act)** filed by the claimant.

Counsel of the workman submits that workman wants to withdraw the present claim. Statement of workman is recorded separately.

In view of the above submission made by the claimant, claim stands dismissed as withdrawn. Award is accordingly passed. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer

Date: 25.09.2024

नई दिल्ली, 19 फरवरी, 2025

का.आ. 257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार शिनहान बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (200/2019) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-256]

सलोनी, उप निदेशक

New Delhi, the 19th February, 2025

S.O. 257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 200/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of Shinhan Bank and their workmen.

[No. L-12025/01/2024– IR(B-I) 25**6**]

SALONI, Dy. Director

ANNEXURE

SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOV. INDUSTRIAL TRIBUNAL CUM – LABOUR COURT NO II, NEW DELHI

ID No. 200/2019

Sh. Vinay Kumar Rai Vs. Shinhan Bank & Ors.

Counsels:

For Applicant/ Claimant*:*

Sh. S.P. Dubey, Ld. AR For claimant.

For Management/ Respondent*:*

None for Shinhan Bank.

None for Cops Security & Allied Services.

AWARD

1. This is the claim petition filed by the claimant U/s 2 (A) of the industrial dispute act, 1947 after the failure report issued by the appropriate government to that effect. Claimant in his statement stated that he had been performing his duty for the last several years in the premises of management-1 through management-2 with the last drawn wages of Rs. 21,700 per month. He did his duty with diligence and honesty. Management had not got his ESI card while he was in service, when he demanded the same, his service had been terminated without giving any cause in writing on 16.11.2016. He had given the written complaint through union to the **labour office, Pushpa Bhawan, Pushp bihar, New Delhi.** Both the managements appeared therein, however, conciliation could not take place there, hence he filed the present claim with the prayer that he be reinstated with full back wages. Notice of this petition had been issued to both the managements. Both the managements had appeared herein. Management-1 had filed the short reply denying employer-employee relationship between him and the claimant. It is the stand of management-1 that he had given contract to **M/s Cops Security and allied services** for security of bank branches at Delhi. Management-1 does not appoint any security guards nor it has any control over security guards/gunmen employed by M/s Cops Security and Allied Services. Wages of security guards are paid by the security agency because management gives an annual tender contract wherein the amount is negotiated and fixed on certain terms of management codified as per contract of management of security. He submits that claim qua him be dismissed.

2. Management-2 had also filed the reply/written statement. He had taken various preliminary objections inter-alia the claim is not maintainable and is liable to be dismissed as statement of claim had not been filed within the time prescribed; as there is no employer-employee relationship between above named claimant and management-1; claim against respondent is misconceived and has been filed upon instigation of some vested interest where only intention is to harass the respondent and blackmail in order to extort money; claim is liable to be dismissed as the workman is guilty of suppression of material particular. On merit, respondent-2 had stated that there was a contract between management-1 and management-2 for providing security services at the bank premises as per address mentioned in the work order and as per the said contract; claimant was employed by management-2 at the place of management-1. Services of the workman had never been terminated, it was workman himself who had left his services from management-2 after taking his full and final amount. He had admitted the date of appointment. He denied that he had continuously taken the service of overtime from workman and did not provide the payment and benefit of overtime services. Management-2 submits that he is still ready to take the workman on duty. He denied that performance of workman was satisfactory. He submits that workman was engaged at the post of security guard with management-2 and he was posted at Shinhan Bank as security guard with a gun to do the duty. However, he had not met the requirement of the duty and various allegations were labeled by management-1. A letter was issued by management-1 to management-2 for his replacement. On the demand of management-1, management-2 requested the workman for his replacement, but he had left the service. He submits that claim of claimant be dismissed.

3. Rejoinder had also been filed by the claimant where he denied the averment made by both the managements and affirmed the averment made in his claim statement.

4. After completion of the proceedings, following issues had been framed vide order dated 16.11.2021:

1. Whether the proceeding is maintainable.

2. Whether there exists employer and employee relationship between the claimant and management-1.

3. Whether the service of the claimant was illegally terminated by the management-2.

4. Whether the claimant is entitled to reinstatement into service with back wages and other benefits as claimed.

5. In order to prove his contention, workman himself had come to the witness box and filed his affidavit of evidence. He had reiterated the facts mentioned in his claim statement. He had relied upon eight documents i.e. Copy of demand letter, copy of postal receipts, complaint given to labour department, failure report, letter given by Cops Security and Allied Services. Both the managements who had been appearing, stopped coming after framing of issues. Workman evidence remained unchallenged because management had not cross-examined the workman witness, even both the managements had been given opportunity to lead its evidence, however, they had chosen not to lead evidence.

6. In order to prove his case, the claimant firstly had to prove that he is a workman, he worked in an industry, an industrial dispute arises and he was terminated for this reason. For this, section 2(S), 2 (J & K) and section 2 (OO) are required to be reproduced.

Section 2 (s) of the Industrial Disputes Act defines the workman, it reads as under:

> ***"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person-***

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties, attached to the office by reason of the powers vested in him, functions mainly of a managerial nature.]

Section 2 (j, k & oo) of the ID Act define the industry and industrial disputes respectively. It reads as under:

[(j)] ***"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;***

(k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb)] termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;

7. From the facts and evidence produced herein, there is no doubt that the claimant is a workman because his job is of manual nature and he stood posted as a security guard in the branch. As respondent-2 was the service provider so it has come within the definition of industry. Now the workman was required to prove that his services were terminated and industrial dispute had been apprehended. He was given the failure report by the conciliation officer, both the managements appeared therein.

8. Now come to the question whether services of the workman had been terminated illegally or unjustifiably and in violation of provision of section 25 (F) of Industrial Dispute Act. Here the workman though had sought the relief against both the managements, however, he had not come with any evidence that he was ever appointed by respondent-

1. His claim is only that he had worked in the premises of respondent-1 through respondent-2 who was the service provider. His contribution had been deducted for PF and ESI by respondent-2. Therefore, no relief can be given against the respondent-1 who is the principal employer. Respondent-2 has taken the stand only that the workman had left the services of his own because he had been asked for replacement due to various complaint received in writing from respondent-1. However, in this respect, workman had not been cross-examined by any of the managements nor the managements had led any evidence buttressing to the fact, therefore naturally, no question arises for compliance of section 25 (F) for retrenching the services of the workman. Hence, workman has proved the case that his services were illegally terminated by management-2. He has not been given any compensation or one month notice, therefore, **issue-1 and 2** in regard to the maintainability and termination of the workman are concerned, the same are held in favor of workman and against management-2.

9. In regard to **Issue-3 & 4**, Workman claims that he be given reinstatement of services with full back wages since his date of termination by management-2 as he is jobless since then and has been facing financial hardship in keeping his family.

10. Further workman had examined himself, WW1 remains unchallenged, unrebutted and uncontroverted, therefore, there is no doubt left in the mind of this court/tribunal that the workman had got any job after his termination.

11. Admittedly, workman had worked for more than six years with management-2. Normally, when services of the workman were terminated, naturally, reinstatement with full back wages would follow. However, in recent past, there has been a shift in the legal position and long line of cases decided by the constitutional court that relief of reinstatement with full back wages is not automatic and maybe fully inappropriate where the workman worked only for a year or two. However, it depends upon case to case where the relief of reinstatement has to be given.

12. Here in the present case, workman at the time of filing the evidence was almost 50 years old, he had not given the list of any family member dependent upon him. So, this tribunal is not inclined to give the relief of reinstatement. It would be better if the lump sum amount is given to the workman in lieu of reinstatement. In these circumstances, amount of Rs. 5,00,000/- (Rupees Five Lakhs only) is an appropriate relief in lieu of his illegal termination. Hence, this award is passed against the respondent-2 for paying the amount of Rs. 5,00,000/- (Rupees Five Lakhs only) in lieu of his illegal termination. Award is accordingly passed. Copy of this award is sent to the appropriate government for notification as required U/s 17 of the I.D. Act. This file is consigned to record room.

ATUL KUMAR GARG, Presiding Officer

Dated 14.06.2024.

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